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In The

Supreme Court of the United States

OCTOBER TERM, 1983

No. _____

IN RE: ELMER H. THOMASSEN,
Petitioner.

PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES, AND THE HONORABLE FRANCIS C. WHELAN, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES

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QUESTIONS PRESENTED

I. WHETHER THE DISTRICT COURT JUDGE HAS MISINTERPRETED THE MEANING OF THIS COURT'S RECENT DECISION IN MORRIS V. SLAPPY WHEN HE INTERPRETED IT TO OVERRULE THE NINTH CIRCUIT CASES AND OTHER CIRCUIT CASES WHICH HOLD THAT A TIMELY SHOWING OF IRRECONCILABLE CONFLICT AND/OR TOTAL BREAK-DOWN OF COMMUNICATIONS BETWEEN COURT-APPOINTED COUNSEL AND DEFENDANT REQUIRES APPOINTMENT OF OTHER COMPETENT COUNSEL TO REPRESENT DEFENDANT.

II. WHETHER IT IS ABUSE OF DISCRETION TO COMPEL DEFENDANT TO BE REPRESENTED BY COURT-APPOINTED COUNSEL FROM THE FEDERAL PUBLIC DEFENDERS OFFICE WHO HAVE NO BACK-GROUND IN TAX LAW WHEN DEFENDANT IS CHARGED WITH TAX EVASION AND WHEN ATTORNEYS ON THE INDIGENT PANEL FOR THE DISTRICT HAVE A BACKGROUND IN CRIMINAL TAX LAW.

III. WHETHER IT IS ABUSE OF DISCRETION TO COMPEL DEFENDANT TO BE REPRESENTED BY COURT-APPOINTED COUNSEL FROM THE FEDERAL PUBLIC DEFENDERS OFFICE WITH WHOM DEFENDANT HAS BECOME EMBROILED IN IRRECONCILABLE CONFLICT AND WHERE THERE IS A TOTAL BREAK-DOWN OF COMMUNICATIONS BETWEEN DEFENDANT AND THE COURT-APPOINTED COUNSEL.

IV. WHETHER IT IS AN ABUSE OF DISCRETION TO COMPEL DEFENDANT TO BE REP-RESENTED BY COURT-APPOINTED COUNSEL WHO IS NOT EXPERIENCED IN CRIMINAL TAX TRIALS WHEN DEFENDANT TIMELY INDICATES THAT HE HAS NO CONFIDENCE IN THE COMPETENCY OF THE COURT-APPOINTED ATTORNEY AND WHEN DEFENDANT TIMELY REQUESTS THAT THE COURT PAY FOR OR APPOINT AN EXPERIENCED CRIMINAL TAX TRIAL ATTORNEY AT THE GOVERNMENT'S EXPENSE.

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PETITION FOR WRIT OF MANDAMUS

The Petitioner/Defendant ELMER H. THOMASSEN, respectfully petitions this Court to issue a Writ of Mandamus to the United States District Court for the Central District of California, and the Honorable Francis C. Whelan, Judge of the United States District Court for the Central District of California, Los Angeles to require them to appoint an experienced criminal tax trial attorney from the indigent panel for the Central District of California to represent Petitioner at the Government's expense; or, in the alternative, appoint a private attorney with experience in criminal tax trials to represent Petitioner at the Government's expense.

Petitioner further requests that the Petition for Writ of Mandamus be expedited because petitioner's trial is set for July 27, 1983.

OPINIONS BELOW

Ninth Circuit. There were no formal opinions rendered in the U.S. Court of Appeals for the Ninth Circuit. The orders entered in the Ninth Circuit are as follows: Order denying Petition for Writ of Mandamus and declaring the Application of Stay pending disposition of Petition as moot. No. 83-7461, entered June 22, 1983 (Appendix to Petition for Writ of Mandamus, hereafter designated: "App.", App. at 22).

District Court. There was no formal opinion rendered in the district court below; however the Transcripts, Docket sheets and Criminal Minutes reflect denials were entered. Transcript of May 18, 1983, App. at 11-13. Transcript of May 31, 1983, App. at 18-19, Criminal Minutes for May 9, 1983, App. at 5, Docket entries for May 9, May 18 and May 31, App. at 29-34. Motion re: Appointment of Experienced Criminal Tax

Trial Attorney denied, May 9, 1983, Reconsideration denied May 31, 1983. Motion for a Continuance denied May 9, 1983. Motion for Relief of Counsel denied May 31, 1983.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C.§1651(a) to hear and grant a Petition for Writ of Mandamus where the lower court mistakes the meaning of a Supreme Court decision and misinterprets it. It has authority to control the discretionary acts of the lower court where they are aggravated and apparent and where there are no other adequate means to obtain relief as in the case herein.

PRIMARY CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment VI:

> In all criminal prosecutions, the accused shall...have the assistance of counsel for his defense.

Constitution of the United States, Amendment XIV:

> Sec. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On April 6, 1983 petitioner/defendant ELMER H. THOMASSEN was indicted for three counts of Income Tax Evasion, 26 U.S.C.§ 7201, App. at 42.

At the date scheduled for arraignment, April 25, 1983, petitioner indicated he did not understand the forms presented to him and expressed a desire to attempt to obtain private counsel of his choice. Defendant indicated his lack of confidence in the

Federal Public Defender's Office because of their lack of knowledge in tax law and criminal tax trials. The Court below granted defendant two weeks' continuance until May 9, 1983 to obtain counsel. (Docket entry and Criminal Minutes for April 25, 1983, App. 25, and 2-4)

On May 9, 1983 petitioner was arraigned. Petitioner had been unable to obtain private counsel because of the inability to raise the necessary funds. His property is tied up with I.R.S. Tax liens. (Criminal Minutes and Docket entries for 5-9-83, App. at 5-7, 28-31) (See also Declarations at 87-89, 172-176). On 5-9-83 petitioner again expressed his lack of confidence in the abilities of the Federal Public Defender's Office because of their lack of knowledge of tax law and experience in criminal tax trials, and resulting incompetence to try a criminal tax case; and on May 9, 1983 petitioner filed a "Motion for

an Order to Pay for an Experienced Criminal Tax Attorney of Defendant's Choice; or, in the Alternative, Order the Government to Release Property held under Lien." (App. at 82). The motion was denied on 5-9-83. (Crim. Min. and Docket for 5-9-83, App. at 5,31). On 5-9-83 petitioner also filed a motion for a continuance (App. at 98) to obtain [competent] assistance of counsel. That motion was also denied on the same date. (Crim.Min. and Docket for 5-9-83, App. at 5, 29). Petitioner was appointed a Deputy Federal Public Defender under protest. (Crim.Min. and Docket for 5-9-83, App. at 6,29).

Prior to being appointed a Deputy Federal Public Defender petitioner filed several motions in propria persona (Docket, App. at 28-29). The motions were summarily denied on 5-9-83. (Crim.Min. and Docket for 5-9-83, App. 6,29-31). These motions were rescheduled for reconsideration on

5-31-83; however, because Hon. Francis C. Whelan refused to permit petitioner to speak to his pro se motions and Deputy Federal Defender refused to argue the pro se motions, they were not argued on 5-31-83 and thus denied on 5-31-83 (Tr. of 5-31-83, App. at 15-19)

At the proceeding in Court on May 18, 1983, the Court ordered that petitioner would not be allowed to speak in court again, because he was represented by counsel. (Referred to in Tr. of 5-31-83, App. at 17). Also on 5-18-83 the Court ordered defendant to "Quit filing papers. I am going to instruct the clerk if you are not going to represent yourself to quit accepting motions from you." (Tr. of 5-18-83, App. at 13)

On 5-18-83 Deputy Federal Defender Yolanda Gomez moved the Court for relief to withdraw as counsel for petitioner. She indicated the grounds were irreconcilable

conflicts , a total breakdown of communication and that she was not competent to try a criminal tax case. (Motion, App. at 105, Tr. of 5-18-83, App. at 11-13) She suggested that the Court appoint an attorney from the indigent panel since the panel had attorneys who were familiar with tax law and had a background in it. The motion was denied but Ms. Gomez was permitted to withdraw on other grounds (Crim.Min. and Docket, App. at 9,34) At the hearing on 5-18-83 Hon. Judge Francis C. Whelan indicated that the U.S. Supreme Court's recent decision Morris v. Slappy 103 U.S. 1610 (1983) was controlling regardless of the Ninth Circuit cases holding that a timely showing of irreconcilable conflict or breakdown of communications was grounds for appointment of other counsel (App. at 12-13). Another Deputy Federal Public Defender was appointed, Brian Q. Robbins, under protest.

The court appointed Deputy Federal Public

Defenders have refused to file motions for petitioner to protect his rights (See Letters to Yolanda Gomez and Brian Q. Robbins, App. at 135-158); they have refused to argue motions for him (Tr. of 5-31-83, App. at 15-17); they have refused to let him know prior to hearings that they received responses to petitioner's pro se motions (motions filed prior to appointment of Federal Public Defender, but scheduled after appointment) (See Declaration, App. at 181-184, para. k-m.). There has been a total breakdown of communications and irreconcilable conflict between the Federal Public Defender's Office and petitioner, leaving petitioner with no representation at all.

Petitioner requested Deputy Federal Public Defender Brian Q. Robbins in writing to file for a stay and writ in Court to protect defendant's rights to effective assistance of Counsel but he has refused to

do so. (See Letter, App. at 150). Petitioner has also asked Brian Q. Robbins and Federal Public Defender James Dunn orally in person to file said papers in District Court and the Ninth Circuit, but they refused (See Declaration at169-170, para. c.) Petitioner has requested Deputy Federal Public Defender Brian Q. Robbins to make a motion to withdraw; but he refuses to do so, except for a weak oral motion. Declaration of Elmer H. Thomassen in Support of Application for Stay Pending Disposition of Petition for Writ of Mandamus in the Ninth Circuit (App. at 168-192) relates further details of the total breakdown of communications and irreconcilable conflicts between petitioner and the Deputy Federal Public Defenders.

Petitioner filed a Petition for Writ of Mandamus in the Ninth Circuit on June 22, 1983 (Petition at App. at 46); however,

the Ninth Circuit held that there was no clear abuse of discretion and therefore denied the Petition on June 24, 1983 (App. at 22).

REASONS FOR GRANTING THE WRIT

I
WRIT OF MANDAMUS IS THE ONLY ADEQUATE REMEDY FOR PETITIONER

A Writ of Mandamus is the only adequate remedy for petitioner/defendant Elmer H. Thomassen because petitioner is prohibited by the court below from lodging or filing any papers or pleadings and petitioner's court appointed attorney has refused to filed for relief in the court below, and the Court has ordered petitioner to stop lodging or filing papers below (Tr. of 5-18-83, App. at 13). The court-appointed attorneys have not responded to petitioner's letters requesting them to file motions and/or writs (Letters, App. at 135-158)

Further, petitioner has no other

adequate remedy because the Order below denying appointment of an experienced criminal tax trial attorney is not appealable and the Ninth Circuit has denied defendant's Petition for Writ of Mandamus.

The court-appointed attorneys for petitioner have filed no-pretrial motions to assist petitioner and unless this Court intervenes to assist petitioner, the trial will proceed on schedule on July 27, 1983 without any effective assistance of counsel at all and the trial will be a total sham and mockery of justice. 28 U.S.C.§1651 envisions just such a circumstance as the case herein to aid a petitioner with extraordinary aid to prevent an injustice and violation of Sixth Amendment and Fourteenth Amendment rights in the Court below.

Unless this Court grants a Writ of Mandamus ordering the District Court below to appoint defendant below competent counsel, petitioner's due process rights to

adequate representation by counsel guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution will be violated and the defendant will be forced to go through the ordeal of a lengthy and costly trial without effective or adequate or competent representation. An appeal at the end of the trial would not be adequate when the court knows in advance that defendant is not being adequately represented.

Proceeding with trial of the defendant on July 27, 1983 without providing petitioner with adequate assistance of counsel will cause the court to incur judicial waste of the court's time and the taxpayer's money. In addition, it will cause a waste of the defendant's time and money also, because it will take him away from his medical practice which is already suffering during his pending bankruptcy proceedings before the Bankruptcy Court for the Central District of California in

Santa Ana, and it will cause him to lose patients and money unncessarily because of the need for a second trial at the conclustion of the first trial.

In considering whether to grant the Writ of Mandamus, to require the District Court to appoint other counsel as requested by petitioner, the Court must balance the right to adequate representation by counsel and the general interest of the public in prompt and efficient administration of justice, which might be prejudiced by any delay caused by such a Writ. In the case at hand, where the violation of petitioner's due process rights are so aggravated and blatant, this Court should grant the Writ of Mandamus to supervise the District Court below relative to petitioner's right to effective assistance of counsel.

There can be no prejudice to the general public where the government has waited between 4 and 6 years to prosecute the case

herein (See Indictment, Counts I through III, App. at 42-45)

II

HONORABLE FRANCIS C. WHELAN, DISTRICT JUDGE, HAS MISINTERPRETED THE MEANING OF THIS COURT'S DECISION IN MORRIS V. SLAPPY WHEN HE INTERPRETED IT TO OVERRULE THE NINTH CIRCUIT CASES AND OTHER CIRCUIT COURT CASES WHICH HOLD THAT A TIMELY SHOWING OF IRRECONCILABLE CONFLICT AND/OR TOTAL BREAKDOWN OF COMMUNICATIONS BETWEEN COURT-APPOINTED COUNSEL AND DEFENDANT REQUIRES APPOINTMENT OF OTHER COMPETENT COUNSEL TO REPRESENT DEFENDANT

The Sixth Amendment provides that "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." A series of Supreme Court decisions over the last 50 years have established that under the Sixth and Fourteenth Amendments a defendant in a state or federal court must be afforded the right to the assistance of

counsel, either retained or appointed, before he can be validly convicted and imprisioned. Powell v. Alabama, 287 U.S. 45 (1932); Johnson v. Zerbst, 304 U.S. 458 (1938); Gideon v. Wainwright, 372 U.S. 335 (1963); Argersinger v. Hamlin, 407 U.S. 25 (1972).

On the issue of whether it is an abuse of discretion to compel one charged with a serious crime to undergo a trial with the assistance of an attorney with whom he has become embroiled in irreconcilable conflict and where there is a total breakdown of communication between the court-appointed attorney and defendant, and whether it is an abuse of discretion not to appoint another competent attorney, Brown v. Craven 424 F.2d 1166 (9th Cir. 1976) is controlling in the Ninth Circuit. U.S. v. Williams 594 F.2d 1258 (9th Cir. 1979) considered Brown v. Craven, supra as controlling and held that on similar facts, it was error

to deny substitution of court-appointed counsel where a motion was made more than a month before trial for substitution of counsel because of the total incompatibility between defendant and his appointed counsel. In Brown v. Craven, supra the defendant chose to keep his court appointed attorney rather than be forced to appear pro se and in U.S. v. Williams, supra the defendant chose to represent himself pro se rather than to continue to be represented by his court-appointed attorney. In both cases the defendant was convicted and his defense was a disaster.

In the case at hand, petitioner, Elmer H. Thomassen has become embroiled in irreconcilable conflicts with his court appointed attorney Brian Q. Robbins and his predecessor Yolanda Gomez who are Deputy Federal Public Defenders and who were appointed by Hon. Francis C. Whelan below and there is a total breakdown of communi-

cations between pretition and his attorneys. Counsel Gomez was relieved as court-appointed attorney for defendant because of a time conflict prohibiting her from preparing for the trial.

Petitioner Elmer H. Thomassen made a motion for a continuance to obtain [competent] assistance of counsel seven (now eleven) weeks prior to trial on May 9, 1983 and made his motion for an experienced criminal tax attorney paid for by the government also on May 9, 1983, seven weeks prior to trial, which was adequate time for the court to consider and grant such a motion, without affecting the fair administration of justice or the court's trial schedule.

If the Court does not provide petitioner with an attorney with experience in criminal tax trials, petitioner's trial will be a sham and a mockery of justice and petitioner will be denied effective

assistance of counsel. Petitioner does not have a court-appointed attorney who is acting as an advocate. On the contrary, his public defender is doing everything in his power to prevent him from exercising his constitutional right to a fair trial. The Sixth Amendment guarantees the indigent defendant that he be given a court appointed counsel who functions as an advocate, as opposed to that of amicus curiae. Ellis v. U.S., 356 U.S. 674 (1958)

Other circuits have also held that where the defendant makes a showing of irreconcilable conflict or total breakdown of communications, the defendant is entitled to other appointed counsel: U.S. v. Hart, 557 F.2d 162 (8th Cir.[Mo.] 1977); U.S. v. Young, 482 F.2d 993 (5th Cir.[Miss.]1973); U.S. v. Calabro, 467 F.2d 973 (2d Cir.[N.Y.]1972), cert. den. 410 U.S.926, reh.den. 411 U.S. 941.

In denying petitioner's motion for a continuance and for appointment of an experienced criminal tax trial attorney at the government's expense, where lack of competence, irreconcilable conflict and total breakdown of communications were alleged, the court below cited Morris v. Slappy as controlling and indicated that the decision overruled the above cited cases of the Ninth Circuit. The District Court below misinterpreted Morris v. Slappy, supra. Morris v. Slappy is not controlling in the case herein.

When the Supreme Court of the United States recently held in Morris v. Slappy, supra that the defendant is not entitled to a "meaningful relationship" with his attorney, it did not overrule the cases cited above. The case at hand can be distinguished from Morris v. Slappy, supra as follows:

In the case at hand the petitioner is not asking for a "meaningful relationship" with his attorney but he is asking for a competent attorney to give him effective assistance of counsel and a meaningful trial which is not a sham or mockery. Petitioner's attorneys have done nothing to assist him in preparation for his trial and in fact have even refused to file motions, refused to argue motions that were filed prior to their entry of appearance, refused to communicate with petitioner, and refused to inform petitioner of responses to motions which petitioner made while he was still pro se.

Petitioner has no confidence in his court appointed Deputy Federal Public Defenders because of their lack of background or experience in criminal tax trials, and he is unable to communicate with them to prepare his defense. Petitioner made timely motions for a continuance to obtain

[competent] assistance of counsel (App. at 98) and a timely "Motion for an Order to Pay for an Experienced Criminal Tax Attorney of Defendant's Choice; or, in the Alternative, Order the Government to Release Property held under lien." (App. at 82)

In Morris v. Slappy, supra, the defendant asked for a continuance only a few days before trial and only in order to give his newly court-appointed attorney time to prepare. However, his attorney indicated he was prepared. He was not dissatisfied with his attorney at that time. In Morris v. Slappy, supra it wasn't until the Third Day of trial that denfendant indicated any dissatisfaction with his attorney, which was too late to ask for a replacement. In the case at hand, the defendant filed his motions for a continuance and for another attorney seven (now eleven) weeks prior to trial.

In the instant case petitioner's court-appointed attorneys have done nothing to further defendant's defense at trial and are totally ineffective as counsel in the preparation of his case and not competent to handle his criminal tax case. They haven't filed even one pre-trial discovery motion and are acting as petitioner's adversary.

III

PETITIONER ELMER H. THOMASSEN IS ENTITLED UNDER THE SIXTH AMENDMENT TO COMPETENT ASSISTANCE OF COUNSEL AND IT IS AN ABUSE OF DISCRETION TO REQUIRE DEFENDANT TO STAND TRIAL WITH COURT-APPOINTED COUNSEL WHO HAS NO EXPERIENCE OR EDUCATIONAL QUALIFICATIONS IN CRIMINAL TAX LAW OR TAX TRIALS, WHERE DEFENDANT IS CHARGED WITH TAX EVASION

From the very beginning of the case below, at the arraignment petitioner indidated his dissatisfaction with representa-

tion by the Federal Public Defender's Office because of their lack of knowledge in tax law and criminal tax trial experience. Petitioner has attempted to obtain an experienced criminal tax attorney on his own; however, because of lack of sufficient funds he was unable to do so; and he has requested that the court appoint him an attorney with experience in criminal tax trials. (Motions, App. at 82 and 98, Declaration, App. at 87-88 and 101-103)

Petitioner's court-appointed Deputy Federal Public Defender Yolanda Gomez made a motion to the court six weeks (now 10 weeks) before trial to be permitted to be relieved as counsel for petitioner and because of her lack of familiarity with tax law and tax trials and because of irreconcilable conflicts with the defendant. (App. 105) In her motions she suggested to the court that it appoint an attorney for the petitioner from the indigent panel since

there are attorneys on that panel who are familiar with tax law and have a background in it. (Motion, App. at 113) The motion was denied; although Ms. Gomez was relieved as counsel for petitioner for other reasons. (Docket, App. at 33-34)

Tax law is a highly specialized field of law which has become recognized by the State Bar of California as one of the specialized areas which requires additional education after law school in order for an attorney to hold himself out to the public as proficient in the field of tax law. None of the deputy public defenders at the Federal Public Defender's Office in Los Angeles have such a specialization; nor do any of them have a background or experience in tax law which would qualify them as competent to represent petitioner Elmer H. Thomassen in his tax trial herein.

In evaluating the competency of the attorneys of the Federal Public Defender's

Office in their ability to handle a highly specialized area as a criminal tax trial, the court should consider the suggestion of the Court in Brennan v. Blankenship, 472 F.Supp 149 (D.C.Va. 1979) aff. 624 F.2d 1092. There the Court indicated that in attempting to make a relevant evaluation of whether representation by an attorney was competent the court may determine the normal level of competence by reference to such sources as case precedent, state bar canons, American Bar Association Standards and in some instances expert testimony.

Permitting a Deputy Federal Public Defender to represent petitioner Elmer H. Thomassen in a criminal tax trial when the court knows he is not competent in the area of criminal tax trials is a violation of American Bar Association Code, E C 2-30:

FAILING TO ACT COMPETENTLY

(A) A lawyer shall not:
(1) Handle a legal matter which

he knows or should know
is not competent to handle.

Disciplinary Rules, Model Code of Professional Responsibility and Code of Judicial Conduct, American Bar Association, as Amended February 1980.

It is further a violation of Rule 6-101 (1) of the Rules of Professional Conduct of the State Bar of California, which states as follows:

> Rule 6-101. Failing to Act Competently.
> A member of the State Bar shall not wilfully or habitually
> (1) Perform legal services for a client or clients if he knows or reasonably should know that he does not possess the learning and skill ordinarily possessed by lawyers in good standing who perform, but do not specialize in, similar services practicing in the same or similar locality and under similar circumstances unless he associates or, where appropriate, professionally consults another lawyer who he reasonably believes does possess the requisite learning and skill;

The attorneys who represent indigents or defendants who are unable to raise the

the funds for their representation should be required to meet the same standards of professional conduct as other attorneys in the State of California and the United States. The standards of professional conduct have been instituted in order to protect the public, including the petitioner. For the court to appoint an attorney who does not meet the standard above required by the State Bar is to provide a defendant with incompetent counsel in violation of the Sixth Amendment and Fourteenth Amendment to the U.S. Constitution. None of the attorneys employed by the Federal Public Defender's Office, including Deputy Federal Public Defender Brian Q. Robbins, is competent to try defendant's criminal tax case because of their lack of tax knowledge and lack of experience in criminal tax trials.

The Court should consider in evaluating the competency of the attorneys of the

Federal Public Defender's Office in Los Angeles in their ability to handle a highly specialized area as criminal tax trial, the conclusion of Chief Justice Burger that as many as one-half of all attorneys appearing in court are incompetent professionally. He would require special training of an attorney before he could become a trial advocate. TIME, Dec. 10, 1973, at 83.

If a trial advocate, in general, needs additional training to appear in court, then a trial advocate who tries a case in such a specialized area as criminal tax law, with no specialized tax training, is even more incompetent if he represents a defendant in such a trial. Ms. Gomez of the Federal Public Defender's by her own admission, indicated that the Federal Public Defenders had no one on their staff with a background in tax law (Motion (App. at 113), but that there were attorneys

on the indigent panel who have a background in tax law.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that this Court issue a Writ of Mandamus to the U.S. District Court for the Central District of California, and the Hon. Francis C. Whelan, District Court Judge, to require them to appoint at the government's expense, an experienced criminal tax trial attorney from the indigent panel for the Central District of California to represent Petitioner; or, in the alternative, to appoint a private attorney with experience in criminal tax trials to represent Petitioner at the government's expense.

July 13, 1983

Respectfully submitted,

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Application for stay denied
by Rehnquist, J. on July 22,
1983. (A-36)

RECEIVED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE
UNITED STATES

HON. JUSTICE REHNQUIST

IN RE.

ELMER H. THOMASSEN,

Petitioner

No. 83-89

~~MOTION FOR A STAY OF TRIAL BELOW PENDING DISPOSITION OF PETITION FOR WRIT OF MANDAMUS AND DECLARATION OR~~ IN THE ALTERNATIVE EXPEDITED DISPOSITION
(Requires disposition before
July 27, 1983)

COMES NOW Petitioner/Defendant ELMER H. THOMASSEN and petitions this Court for an immediate stay of the trial date below which is scheduled for July 27, 1983 at 10:00 a.m. pending disposition of Petition for Writ of Mandamus filed herein on the same date as the within motion.

In the alternative, Petitioner moves for an expedited disposition of the Petition for Writ of Mandamus.

In support of said motion for stay pending disposition of the Petition for Writ of Mandamus, pentioner/defendant relies on the Petition for Writ of Mandamus, the Appendix to the Petition for Writ of Mandamus and the Declarations of Petitioner attached hereto.

In further support of the motion for a stay pending disposition of the Petition for Writ of Mandamus or in the alternative an expedited disposition of the Petition for Writ of Mandamus petitioner states the following:

1. Unless the Court grants this motions for a stay, the trial court below will require petitioner to proceed with the trial below on July 27, 1983 without competent assistance of counsel and without assistance of counsel.

2. The Petition for Writ of Mandamus is submitted for the purpose of stated therein and has merit and is not submitted for the purpose of delay and is not frivolous.

Respectfully submitted,

Jeanene Moenckmeier

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Counsel for Petitioner

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

DECLARATION OF ELMER H. THOMASSEN

I ELMER H. THOMASSEN, declare as follows:

1. I am the petitioner in the Petition for Writ of Mandamus filed herein.

2. I am unable to request relief in the court below because the District Court has ordered that I may not speak in the District Court as long as I am represented by an attorney and the Hon. Francis C. Whelan, Judge has ordered that I may not lodge or file any papers with the clerk.

3. I first waited for my Deputy Federal Public Defender to file the Motion for a stay in District Court below and/or in the Ninth Circuit and for him to file a Petition for Writ of Mandamus; however, my Deputy Federal Public Defender, Brian Q. Robbins refused to file for either a stay or for a Writ of Mandamus. Mr. James Dunn, Federal Public Defender in Los Angeles also refused to file the above mentioned papers for me in either the Court below or in the Ninth Circuit. Further the Deputy Federal Public Defender, Brian Robbins, refuses to file any of the motions I have requested him to file.

4. It is urgent that this Court expedite my motion for a stay because my trial is cheduled for July 27, 1983 and the Honorable Francis C. Whelan has ordered that there will be no excludable time for motions. The Judge has stated in open court on more than one occasion that he would grant no excludable time for motions and would insist on maintaining the trial date.

5. I have ineffective assistance of counsel in the preparation of the trial below as follows: My court-appointed attorney refuses to file any motions on my behalf, refuses to respond to any of my letters, has refused to file for a stay or petition for writ of mandamus. I am unable to communicate with my attorney concerning my case because of irreconcilable differences and because he is unwilling to talk to me when I visit his office.

6. I have ineffective assistance of counsel because my court-appointed attorney Brian Robbins is not capable of representing me in a criminal tax trial.

7. The only alternative the court has offered me to being represented by Brian robbins is to represent myself.

8. My attorney refuses to file the necessary pre-trial motions and my trial is only about two weeks away.

9. The statements of fact in the attached Declaration which was orginally submitted to the Ninth Circuit in support of my Motion for a Stay pending disposition of Petition for Writ of Mandamus are true and correct.

10. The foregoing statements of fact are true and correct to the best of my knowledge and belief and made under penalty of perjury. Executed in Newport Beach, California on July 11, 1983.

E H Thomassen

Elmer H. Thomassen

DECLARATION OF ELMER H. THOMASSEN IN SUPPORT OF APPLICATION FOR STAY PENDING DISPOSITION OF PETITION FOR WRIT OF MANDAMUS:

I, ELMER H. THOMASSEN, declare:

1. I am the defendant in the case below in U.S. District Court for the Central District of California in Los Angeles, U.S. v. Elmer H. Thomassen, CR 83-271, Francis C. Whelan presiding.

2. The purpose of this declaration is to support my application for a stay pending disposition of my Petition for Writ of Mandamus.

3. I have filed this motion for a stay and the corresponding Petition for Writ of Mandamus as quickly as possible; however, the following factors have prevented me from applying for this earlier and have prevented me from requesting a stay in the court below:

a. On June 2, 1983 while visiting Deputy Federal Public Defender Brian Q. Robbins at his office at 312 N. Spring Street, Los Angeles, Calif. 90012 the car which I was driving was stolen from where it was parked near the I.R.S. headquarters. All of my documents related to this case were stolen and needed to be replaced before I could prepare and file this Motion and the Petition for Writ of Mandamus. (Please see Victim's Report, Appendix to Petition for Writ of Mandamus, hereafter designated "App.," App. at A-132)

b. The transcript for the hearing on May 31, 1983 was not ready until just recently. The transcript was necessary for this Court to understand my case.

c. I first waited for my Deputy Federal Public Defender to file the Motion for a Stay in District Court below and/or in the Ninth Circuit and for him to file a Petition for Writ of Mandamus; however, my Deputy Federal Public Defender, Brian Q. Robbins refused to file for either a stay or for a Writ of Mandamus. Mr. James Dunn, supervisor of Federal Public Defenders in Los Angeles also refused to file the above mentioned papers for me in either the court below or in this Court. (See Letter to Brian Q. Robbins, App. at A-129)

d. The master-file in the clerk's office below was weeks behind, so I had to wait until the master file was available to prepare this motion and Petition for Writ of Mandamus.

4. It is urgent that this Court expedite my motion for a stay because my trial is scheduled for June 28, 1983 and the Honorable Francis C. Whelan has ordered that there will be no excludable time for motions. (See Docket entry No. 20 for 5/18/83, App. at A-4 and Docket entry for 5/31/83, App. at A-7). The Judge has stated in open court on more than one occasion that he would grant no excludable time for motions and would insist on the June 28, 1983 trial date, even if it was necessary to interrupt another trial to impanel the jury.

Judge Whelan refuses to permit the trial to be set for a date later than June 28, 1983 because of a reported conflict with a seminar and/or vacation time.

5. I have made the following attempts to obtain competent counsel to represent me at my trial:

a. On April 25, 1983, I requested that the court grant me a continuance to enable me to retain an attorney of my choice because I had no confidence in the Federal Public Defender's Office because of their lack of knowledge and experience in tax law and criminal tax trials. (See Docket entries for April 25, 1983 and May 9, 1983 at A-1, A-2 and Criminal Minutes for April 25, 1983 and May 9, 1983, App. at A-9 and A-10).

b. On May 9, 1983 I filed a "Motion for an Order to Pay for an Experienced Criminal Tax Attorney of Defendant's Choice or, in the alternative, Order the Government to Release Property held under lien, Points & Authorities and Declaration." (App. at A-37) On May 9, 1983 the Court denied the motion and on May 31, 1983 the Court again denied the motion on reconsideration. (See Docket entries for May 9, 1983, App. at A-6 & A-7, and Criminal Minutes for May 9, 1983, App. at A-10, and Transcript of May 31, 1983, App. at 28.)

c. The facts stated in my declaration attached to my"Motion for an Order to Pay for an Experienced Criminal Tax Attorney...." filed below on May 9, 1983 are incorporated herein by reference, and are true and correct. (See Declaration attached to Motion, App. at A-40).

d. I have contacted the following attorneys to represent me in my trial; however, I was unable to retain my attorney of choice because the attorneys requested between $15,000.00 and $20,000.00 retainers in advance:

Robert Chatterton, Orange County
Arthur Tranakos, Atlanta, Georgia
Donald Macpherson, Phoenix, Arizona
M. D'Amico, San Diego, California
Earl Durham, San Diego, California

(Please see Declaration, App. at A-40 and Declaration attached to Motion for Continuance, filed May 9, 1983, App. at A-90).

e. I am unable to obtain loans for attorneys' fees because all of my property has I.R.S. liens against it, from judgment before the U.S. District Court below (CV 78-1731MR).

f. I have attempted to obtain loans from the following people and others but have been been unsuccessful in obtaining a loan:

George W. Thomassen (See App. at A-130, A-131)
James Saline (See App. at A-42)
Robert G. Costantinou (See App. at A-43)

George W. Thomassen has specifically refused a loan to me because liens for my assessed taxes have been attached to his real property in California. (See Letter, App. at 131 and Telegram, App. at A-130).

g. Deputy Federal Public Defender Yolanda Gomez suggested to the Court in her motion filed May 18, 1983 (App. A-95) and argued on May 18, 1983 (Transcript of 5-18-83, App. at A-20) that the Court appoint someone from the indigent panel since "There are attorneys on the indigent panel who are familiar with tax law and have a background in it." (See Motion at p. 6, App. at A-100).

h. On May 9, 1983 I filed a Motion for a Continuance in Order to Obtain [competent] Assistance of Counsel. (See Motion, App. at A-88); however, my motion was denied on the

same date. (Docket entry No. 14 on May 9, 1983, App. at A-3 and Criminal Minutes for May 9, 1983, App. at A-10). The Court further indicated on May 18, 1983 that "speedy trial excludable time finding would not be made by court based on motions filed." (See Docket entries for 5/18/83, docketed 5/20/83, App. at A-4).

i. I have asked Brian Q. Robbins, my Deputy Federal Public Defender, in person and in writing to file a writ and/or other papers in the Ninth Circuit to protect my rights to due process regarding the denial of my motions for competent assistance of counsel (See Letter to Mr. Robbins, App. at A-129); however, Mr. Robbins has refused to file for any writ or for a stay in conjunction with the writ.

6. The following facts support my position that I have been furnished with inadequate and incompetent counsel, and denied effective assistance of counsel for my criminal tax trial:

a. Deputy Public Defender Yolanda B. Gomez appeared specially as a courtesy to the court on April 25, 1983; but she had refused to file any pre-trial motions or assist me with the motions that I filed while I was without counsel due to no fault of my own. Ms. Gomez also was ordered to appear at my so-called arraignment on May 9, 1983, and again refused to assist me with my pretrial motions or even read them. (See Docket entries for 5/25/83 and 5/9/83 at A-1 to A-3; and Letter to Ms. Gomez, App. at A-107).

b. Ms. Gomez requested that she be relieved from handling my case because she was not competent to handle a case of this magnitude. (See Transcript of 5-18-83, App. at

A-22 to A-24, and Motion to Ms. Gomez, App. at A-95).

c. Ms. Gomez' Motion for Relief was first denied by the Court on May 18, 1983; however, because Ms. Gomez had a calendar conflict, Deputy Federal Public Defender Brian Q. Robbins was substituted for Ms. Gomez on May 19, 1983 (Docket Entry No. 19, App. at A-4; Transcript of 5-18-83, App. at A-20 to A-24; Criminal Minutes 5-19-83, App. at A-11).

d. Mr. Robbins informed me immediately after his appointment that he has had only one other criminal tax case, but has not completely tried any and has not won any in trial.

e. Since being appointed my counsel on May 19, 1983, Mr. Robbins has adamently refused to file, research, or argue any of my pretrial motions which I filed when I was in propria persona; likewise, he has refused to file any of the trial motions I have prepared for him to file since his appointment. (See letters to Mr. Robbins, App. at A-107 to A-129).

f. At the proceeding in Court on May 18, 1983, when Mr. Robbins was appointed to represent me, the Court ordered that I would not be allowed to speak in court again, and if I attempted to do so, that my bond would be withdrawn and I would be placed in immediate custody. (Referred to in Transcript of 5-31-83, App. at A-28, lines 1-3; but not included in partial Transcript of 5-18-83, App. at A-20).

g. At the proceeding in Court on May 18, 1983, the Court ordered me to "Quit filing papers. I am going to instruct the clerk if you are not going to represent yourself to quit accepting motions from you." (Transcript of 5-18-83 at p. 5, App. A-24).

h. At the proceeding in Court on May 31, 1983, Mr. Robbins refused to argue my motions which had been filed prior to appointment of my court appointed counsel. He stated it was the policy of the Federal Public Defender's Office not to permit the Deputy Federal Public Defender to argue defendant's pro se motions. (See Transcript of 5-31-83, App. at A-27)

i. Mr. Robbins did ask the Court if I could speak to my motions on May 31, 1983, but the court refused to allow me to speak. (Transcript of May 31, 1983, App. at A-27).

j. At the hearing on May 31, 1983, Mr. Robbins failed to ask for the grounds used by the Court for the denial of pre-trial motions when they were before the Court for hearing or reconsideration. Therefore, my pre-trial motions have gone unargued so far at the time they were before the Court. (Transcript of 5-31-83, App. at A-27 to A-31).

k. Mr. Robbins did not advise me that the U.S. Attorney had filed a response to my motions, in spite of the fact that he expected me to argue the motions myself (Transcript of 5-31-83, App. at A-27), and in spite of the fact that the responses had been hand delivered to him on May 27, 1983, and filed on May 27, 1983. (See Docket entry on May 27, 1983, App. at A-6). The docket entry on May 27, 1983, is in error in stating that a "reply to answer to motion to dismiss" was filed. Mr. Robbins made no reply to the U.S. Attorney's responses to my motions.

l. I did not find out until June 2, 1983, that the U.S. Attorney had filed responses to my motions scheduled to be heard on May 31, 1983, because the computer print-out of the current docket entries was not up-dated on May 31, 1983. When I checked with the docket clerk and had her run a print-out of

the current docket entries on May 31, 1983, there was no entry after May 19, 1983; thus, there was no way that I could have known that the U.S. Attorney had filed responses to my pre-trial motions on May 27, 1983, since Mr. Robbins chose not to advise me of the U.S. Attorney's responses, even though he had been personally handed them on May 27, 1983 by the U.S. Attorney.

m. I did not receive the up-to-date computer print-out of the docket until June 2, 1983; and I was shocked to see that the U.S. Attorney had apparently responded to my four motions scheduled for hearing or rehearing on May 31, 1983, and had filed responses on May 27, 1983. I immediately contacted Mr. Robbins on June 2, 1983, at about 5:00 p.m., and confronted him with the docket sheet entry of May 27, 1983. (See docket entry, App. at A-6). Mr. Robbins advised me to wait and he would get a copy of the U.S. Attorney's responses to my motions. I waited for Mr. Robbins to return with the responses until nearly 6:00 p.m. At that time, I was dumbfound when finally Mr. Dunn, the Federal Public Defender, who is Mr. Robbin's supervisor, told me that Mr. Robbins had certainly gone home and that it would be useless for me to wait any longer. (See Lobby Registration Log, App. at A-133). Mr. Robbins not only did not return with the U.S. Attorney's responses, but contemptuously left me waiting in pain on crutches while he went home. It was evidently during this time that car which I had been driving was stolen where it was parked with my handicap emblem on it near the I.R.S. headquarters; the car contained my papers concerning this case and two typewriters. (See Victim's Report, App. at A-132; and see Docket entries for 5-27-83 at A-6 which were not on the computer on May 31, 1983).

n. I have attempted to protect my rights by filing and/or lodging my own motions when Mr. Robbins refused to file motions for me; however, because of Judge Whelan's order to the Clerk not to accept my motions, I have no means of protecting my rights in the court below. The foregoing statement is supported by the following facts:

For example, immediately after the court hearing on May 19, 1983, which was exactly ten days following my so-called arraignment, I asked Mr. Robbins if he would file a motion that I had prepared for a Bill of Particulars. He stated that he would not file it for me. Since I could not file the motion myself due to Judge Whelan's order silencing me and preventing me from filing any papers, (See Transcript of 5-18-83, App. at A-24) I asked Mr. Robbins if I could lodge the motion for a Bill of Particulars, as the Court had not ordered me not to lodge any papers. Though Mr. Robbins refused to do so, he suggested that I could lodge the motion for a Bill of Particulars myself. This I proceeded to do by first serving Assistant U.S. Attorney Jeffrey Niesen, who was the assistant U.S. Attorney assigned to my case. Then I tried to lodge the motion, but the regular court clerk refused to allow me to lodge the motion, stating that the Court had ordered her to accept no papers from me. I then proceeded to Judge Whelan's courtroom and presented the motion for a Bill of Particulars to Judge Whelan's clerk. She also refused to accept the motion for lodging, stating that the Court had ordered me not to lodge or file any papers. I explained to her that even the Court had not ordered me to stop lodging any documents for the record. (See Transcript of 5-18-83,

App. at A-24).

o. I have both orally and in writing requested Mr. Robbins to correct the record and docket entries which have numerous errors which are prejudicial to me, but he has refused to do so. (See letter to Mr. Robbins, App. at A-112) The record and entries have errors as follows: (not complete)

1. Item No. 2 under date of April 18, 1983 on the docket (Docket entry, App. at A-1) is in error in that no arraignment was actually held on that date and it is further in error in that Public Service Officer D. Elias misled the Court when he said I had been contacted, because he had never spoken to me, nor was I aware of any scheduled Court appearance. I was not aware of the indictment until my wife called me out of the state where I was attending a continuing medical education meeting, on or about April 22, 1983. (See Docket entry No. 2 on 4-18-83, App. A-1). I first saw the indictment (See Indictment, App. A-13) on Friday, April 22, 1983, after I signed for certified mail at the post office.

2. Docket entry, item No. 4, (App. at A-1) and the Minute Order for April 25, 1983, (App. at A-9) show errors, as follows:

a. I did not inform the Court that I could not hire private counsel. I stated that I would attempt to hire private counsel. (See lines 5 and 6 of the minute order, App. at A-9). (See also Motion, App. A-44)

b. Line 6 of the minute order of April 25, 1983, states that I refused to complete CJA 23, Financial Affidavit. I did not refuse to complete the Financial Affidavit; I stated I could not fill it out without the assistance of counsel, which the court refused to grant me for this purpose. (App. at A-9)

c. Likewise, I did not refuse to sign the P/R Bond. I merely requested assistance of counsel for this step of the proceeding, which was not granted by the Court.

d. Finally, I was assigned to Judge Kenyon on the 25th of April, 1983, but was subsequently assigned to Judge Francis C. Whelan.

3. Item No. 6 on the docket (App. at A-2) under date of April 26, 1983, shows Motion No. 1 was filed on April 26, 1983, when it was actually filed and so stamped as filed on April 25, 1983 (App. at A-33), when I was in propria persona. The document which was filed on April 26, 1983 was a Supplement and Memorandum of Points and Authorities and Declaration which was not the original motion. (App. at A-2)

4. On May 9, 1983, a so-called arraignment was held and the court first plead me "guilty" in open court and subsequently changed the plea to "not guilty." Contrary to the docket entry for May 9, 1983 (App. at A-3) and Criminal Minutes for May 9, 1983 (App. at A-10), only the first count of the indictment was read to me and that count I did not understand.

5. On line 18 of Item 14 on the docket for May 9, 1983, the docket shows that I entered a plea of "not guilty." This entry is in error, as I made no such plea. (Docket, App. at A-3) The Court entered a plea for me.

6. On May 18, 1983, the docket print-out shows that I lodged supplemental defendant's counsel (relief motion), in propria persona. Then the statement is made: (Placed in file not used.) This is in error. The motion was used by the Court. As a matter of fact, the Court received a copy of this motion supplement and referred to it in the hearing on May 18, 1983. (See Docket, Item No. 18, lines 1 and 2, App. at A-4; and Transcript of 5-18-83, App. at A-22).

7. Also, on May 18, 1983, Docket Item No. 19, lines 4 and 5 (App. at A-4), states: "Crt ords clerk of crt not to accept any documents submitted by Dr. Thomassen in pro per, for lodging for filing." (emphasis added) The Court did not order me not to lodge any papers, but the court clerk added the word "lodging." (See Docket Entry No. 19, App. at A-4 and Transcript of 5-18-83, page 5, line 1, App. at A-24).

8. Docket Entry for May 27, 1983 (App. at A-6) is in error. It states: "Reply to answer to motion to dismiss" (Motion #3). No answer was filed and no reply was filed. Only a response was filed by the United States.

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

I, Elmer H. Thomassen, declare under penalty of perjury that the foregoing statements of fact in the Declaration of ELMER H. THOMASSEN in Support of Application for Stay Pending Disposition of Petition for Writ of Mandamus are true and correct. Executed on June 17, 1983 in Newport Beach, Calif.

E H Thomassen

Elmer H. Thomassen

IN THE
SUPREME COURT OF THE
UNITED STATES

IN RE:	)	
	)	
ELMER H. THOMASSEN,	)	No. _____
	)	
Petitioner	)	AFFIDAVIT OF SERVICE
	)	

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

I, JEANENE MOENCKMEIER, after being duly sworn, depose and state the following:

1. I am a member of the Bar of Missouri and my office address is 8326 Lackland Road, St. Louis, Mo. 63114 I am a resident of the County of St. Louis, State of Missouri.

2. On July 14, 1983 three copies of the Petition for Writ of Mandamus and three copies of the Appendix to the Petition for Writ of Mandamus and one copy of the Motion for a Stay were mailed to the following via express mail:

UNITED STATES ATTORNEY
BY: Jeffrey Niesen, AUSA
1200 United States Courthouse
312 N. Spring Street
Los Angeles, Calif. 90012

Hon. Francis C. Whelan
U.S. District Judge
U.S. District Court for the
Central District of California
312 North Spring Street
Los Angeles, Calif. 90012

3. The foregoing statements of fact are true and correct and made upon my personal knowledge.

Jeanene Moenckmeier
Jeanene Moenckmeier

Subscribed and sworn to before me this 14th day of July, 1983.

Robert G. Costantinou
NOTARY PUBLIC

My commission expires:

ROBERT G. COSTANTINOU
NOTARY PUBLIC, STATE OF MISSOURI
MY COMMISSION EXPIRES DEC. 26, 1986
ST. LOUIS COUNTY

83-89

Office - Supreme Court, U.S.
FILED
JUL 18 1983
ALEXANDER L. STEVAS, CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 1983

No. _____

IN RE: ELMER H. THOMASSEN,
Petitioner.

APPENDIX TO
PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES, AND THE HONORABLE FRANCIS C. WHELAN, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES

Jeanene Moenckmeier
COSTANTINOU & MOENCKMEIER, P.C.
8326 Lackland Road
St. Louis, Missouri 63114

Counsel for Petitioner

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES--ARRAIGNMENT AND PLEA

Case No. CR 83-271 Date: April 18, 1983

Docket Entry: Ord case continued to Monday, April 25, 1983 at 8:30 A.M. before Magistrate James W. McMahon, PSA mk contact w/deft. New summons. Writs to be issued to ensure the presence of the defendant. (MAG. JRK) PSA officer D Elias informs the Court that defendant has been contacted is aware of court appearance.

U.S.A. vs. Elmer H. Thomassen.

NOT present x Summons

PRESENT: HON. JOHN R. KRONENBERG MAGISTRATE, R. A. Klein, Deputy Clerk, Delia RutunnoTane, Court Reporter #541A, Michael Emmick, Terry Bowers and David Katz, Asst. U.S. Attorney, Maria Stratton DFPD, Attorney for Defendant x present.

x Arraignment and pleas continued to April 25, 1983 at 8:30 A.M.

ENTERED ON COURTR
APR 19 1983

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. CR 83-271 Date April 25, 1983

PRESENT: HON. JAMES W. MC MAHON, MAGISTRATE

Ralph A. Klein, Deputy Clerk

Sherrill Boutte, Court Reporter

Brian Sun & David Katz, Asst. U.S. Attorney

U.S.A. v. (DEFENDANTS LISTED BELOW)

(1) Elmer H. Thomassen

x present x summons

ATTORNEYS FOR DEFENDANTS

(1) Yolanda Gomez-DFPD

x present

PROCEEDINGS: Post Indictment Arraignment & Assignment.

Defendant is present. Yolanda Gomez-DFPD is present. Defendant informs the Court that he does not want FPD Office to repre-

sent him due to the fact of lack of knowledge of Tax law. Court orders that Yolanda Gomez DFPD is designated to represent defendant for these proceedings & plea proceedings only. Defendant informs the court that he is able to hire private counsel. Defendant refuses to complete CJA 23, Financial Affidavit. Defendant informs the court that he did not understand the contents of CR Form 44, Statement of Defendant's Constitutional Rights Form. Court reads the contents of this form to the defendant is open court. Defendant is given a copy of the Indictment and the clerk reads the Indictment to the defendant in open court. Defendant refuses to sign his P/R Bond. Court informs the defendant that failure to sign his bond will cause the court to remand him. Defendant signs his $10,000 P/R Bond, Court approves the bond. Posted $10,000 P/R bond.

Car of Senior Judge Whelan is drawn by random selection by the court. Orders case is assigned to Senior Judge Francis C. Whelan at 1:45 P.M. tomorrow, Tuesday April 26, 1983. Defendant and counsel are ordered to appear before Judge Whelan at the time and date indicated. Court further informs defendant of the location of Judge Whelan's courtroom #7, on the second floor of this building. Lodged by order of the court, defendant's motion for Grand Jury transcripts.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. CR 83-271-FW Date May 9, 1983

PRESENT: HON. FRANCIS C. WHELAN, JUDGE
Christine Ajala, Deputy Clerk
Xavier Mireles, Court Reporter
William J. Landers, Asst. U.S. Attorney

U.S.A. v. (DEFENDANTS LISTED BELOW)

(1) Elmer H. Thomassen

x present x bond

ATTORNEYS FOR DEFENDANTS

(1) Yolanda Gomez, DFPD

x present x appointed

PROCEEDINGS: PLEA & TRIAL SETTING:

Deft is present without retained counsel. Court denies deft's motion for further continuance to obtain counsel. Court

appoints DFPD Yolanda Gomez to represent deft. Deft's motion for order to pay for an experienced criminal tax attorney of deft's choice, or in the alternative order the govt to release property held under lien is DENIED. Deft's motion for dismissal for lack of subject matter jurisdiction is DENIED. Deft's motion to dismiss for lack of personal jurisdiction is DENIED.

Deft states his true name is as charged in the Indictment. Clerk reads Indictment. Deft states he does not understand the Indictment in response to Clerk's question as to his plea. Court enters pleas for deft of Not Guilty as to all 3 counts of the Indictment and sets case for trial on 6-28-83 at 10AM.

Deft is granted permission to travel to Nebraska on business & is ordered to be

present for trial on 6-28-83 at 10:00 A.M. w/o further notice.

Govt informs Court the Jenks Act material has beer photocopied & will re turned over o Ms. Gomez forthwith.

Initials of Deputy Clerk /s/CA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. CR 83-271-FW Date May 19, 1983

PRESENT: HON. FRANCIS C. WHELAN, JUDGE
Christine Ajala, Deputy Clerk
Xavier Mireles, Court Reporter
Jeffrey S. Niesen, Asst. U.S. Attorney

U.S.A. v. (DEFENDANTS LISTED BELOW)

(1) Elmer H. Thomassen

x present x bond

ATTORNEYS FOR DEFENDANTS

DFPDs Brian Q. Robbins & Yolanda Gomez

x present x appointed

PROCEEDINGS: FURTHER HEARING: Motion of DFPD Yolanda Gomez for relief of counsel [fld 5-18-83 w/OST]

DFPD Gomez advises the Court that FPD Dunn

has re-assigned the defense of this case to Brian Q. Robbins, if this is acceptable to the Court. Court accepts substitution of DFPD Robbins and excuses DFPD Gomez.

DFPD Robbins advises Court he may need to file motions including discovery, on shortened time. Court orders any motions filed by DFPD Robbins may be heard on 3 days notice.

Trial will go forward as scheduled on 6-28-83 at 10:00 A.M. Court indicates the speedy trial excludable time finding would not be made by Court based on motions being filed.

Initials of Deputy Clerk

CA

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE FRANCIS C. WHELAN, SENIOR JUDGE PRESIDING

UNITED STATES OF AMERICA, PLAINTIFF, VS. ELMER H. THOMASSEN, DEFENDANT.	CASE NO. CR 83-271-FW COPY

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PLACE: LOS ANGELES, CALIFORNIA

DATE: WEDNESDAY, MAY 18, 1983

XAVIER MIRELES
OFFICIAL COURT REPORTER
414 U.S. COURT HOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIF. 90012
213/620-1683

A P P E A R A N C E S:

FOR THE PLAINTIFF:

STEPHEN S. TROTT, UNITED STATES ATTORNEY
ROBERT L. BROSIO, ASST. U.S. ATTORNEY
BY: JEFFREY S. NIESEN
1200 U.S. COURT HOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALFORNIA 90012

FOR THE DEFENDANT:

JAMES R. DUNN, FEDERAL PUBLIC DEFENDER
BY: YOLANDA B. GOMEZ
1503 U.S. COURT HOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

LOS ANGELES, CALIFORNIA; WEDNESDAY, MAY 18, 1983, 2:00 P.M.

(THE COURT GAVE ITS ATTENTION TO OTHER MATTERS ON ITS CALENDAR AFTER WHICH THE FOLLOWING PROCEEDINGS WERE HAD.)

THE CLERK: ITEM NUMBER FOUR, CR-83-271-FW: UNITED STATES OF AMERICA VERSUS ELMER H. THOMASSEN.

COUNSEL, ANNOUNCE YOUR APPEARANCE.

MR. NIESEN: GOOD AFTERNOON, YOUR HONOR. JEFFREY NIESEN FOR THE GOVERNMENT.

MS. GOMEZ: GOOD AFTERNOON. YOLANDA GOMEZ FOR THE DEFENDANT DR. ELMER THOMASSEN AND HE IS PRESENT HERE IN COURT.

THE COURT: LET ME SEE A COPY OF YOUR

AFFIDAVIT, MISS GOMEZ, BECAUSE APPARENTLY DR. THOMASSEN HAS FILED A DECLARATION AND I'D LIKE TO SEE A COPY OF YOUR DECLARATION.

MS. GOMEZ: IF IT WOULD ASSIST THE COURT, PERHAPS I COULD --

THE COURT: JUST A MINUTE. JUST A MINUTE. (PAUSE.)

THE COURT: LET THE RECORD SHOW THAT DR. THOMASSEN AND MISS GOMEZ ARE PRESENT.

MISS GOMEZ, APPARENTLY YOU NEVER SAW FIT TO READ THE SLAPPY CASE, DID YOU?

MS. GOMEZ: YES, I DID READ IT, YOUR HONOR.

THE COURT: AND IT DOESN'T SUPPORT THOSE OTHER CASES AT ALL THAT YOU CITED.

MS. GOMEZ: YOUR HONOR, I DON'T BELIEVE THAT THE SLAPPY CASE IS APPLICABLE IN THE SITUATION THAT WE HAVE BEFORE THIS COURT.

THE COURT: JUST A MINUTE. WELL, I DON'T CARE WHETHER YOU BELIEVE IT OR NOT. THE SLAPPY CASE HELD THAT THE MAN COULDN'T

COMPLAIN, THAT HE DIDN'T WANT THE ONE LAWYER TO REPRESENT HIM.

MS. GOMEZ: YES, THAT IS CORRECT, YOUR HONOR.

THE COURT: AND THAT THERE WAS NO SUCH THING AS A MEANINGFUL PERSONAL RELATIONSHIP.

MS. GOMEZ: THAT IS TRUE, YOUR HONOR.

THE COURT: ALL RIGHT.

MS. GOMEZ: MAY I BE HEARD?

THE COURT: FOR YOU TO CITE THOSE OTHER CASES WITHOUT CITING THE LANGUAGE OF SLAPPY ISN'T REALLY THE WAY YOU SHOULD HAVE DONE IT.

DO I UNDERSTAND THEN, DR. THOMASSEN, THAT YOU WANT TO REPRESENT YOURSELF?

THE DEFENDANT: NO, YOUR HONOR. I DON'T FEEL COMPETENT.

THE COURT: WELL, QUIT FILING PAPERS. I AM GOING TO INSTRUCT THE CLERK IF YOU ARE NOT GOING TO REPRESENT YOURSELF TO QUIT ACCEPTING MOTIONS FROM YOU.

(FURTHER PROCEEDINGS WERE HAD AND REPORTED BUT NOT TRANSCRIBED HEREIN FOR PURPOSES OF A PARTIAL TRANSCRIPT.)

* * * * * * * * * * * *

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE FRANCIS C. WHELAN, SENIOR JUDGE PRESIDING

UNITED STATES OF AMERICA,	)	
	)	
PLAINTIFF,	)	CASE NO.
VS.	)	CR 83-271-FW
	)	
ELMER H. THOMASSEN,	)	COPY
	)	
DEFENDANT.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PLACE: LOS ANGELES, CALIFORNIA

DATE: TUESDAY, MAY 31, 1983

XAVIER MIRELES
OFFICIAL COURT REPORTER
414 U.S. COURT HOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIF. 90012
213/620-1683

A P P E A R A N C E S:

FOR THE PLAINTIFF:

STEPHEN S. TROTT, UNITED STATES ATTORNEY
ROBERT L. BROSIO, ASST. U.S. ATTORNEY
BY: JEFFREY S. NIESEN
1200 U.S. COURT HOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

FOR THE DEFENDANT:

JAMES R. DUNN, FEDERAL PUBLIC DEFENDER
BY: BRIAN H. ROBBINS
1503 U.S. COURT HOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

LOS ANGELES, CALFORNIA; TUESDAY, MAY 31, 1983, 1:30 P.M.

(THE COURT GAVE ITS ATTENTION TO OTHER MATTERS ON ITS CALENDAR AFTER WHICH THE FOLLOWING PROCEEDINGS WERE HAD.)

THE COURT: IN THE CASE OF UNITED STATES OF AMERICA VERSUS ELMER H. THOMASSEN, LET THE RECORD SHOW THAT THE DEFENDANT IS IN COURT PERSONALLY AND WITH HIS LAWYER.

MR. ROBBINS: YOUR HONOR, AS I UNDERSTAND IT, BEFORE OUR OFFICE WAS APPOINTED, DR. THOMASSEN FILED CERTAIN MOTIONS.

THE COURT: YES.

MR. ROBBINS: AND --

THE COURT: WELL, NOT BEFORE -- NOT BEFORE YOUR OFFICE WAS IN THE CASE BUT WITHOUT THE KNOWLEDGE OF MS. GOMEZ.

MR. ROBBINS: IT WOULD BE OUR OFFICE'S REQUEST, YOUR HONOR, THAT FOR PURPOSES OF THESE MOTIONS, THESE ARE DR. THOMASSEN'S MOTIONS AND NOT THOSE OF THE FEDERAL PUBLIC DEFEDER'S OFFICE AND THAT IT WAS OUR UNDERSTANDING THAT HE WAS THE ONE WHO WAS GOING TO SPEAK TO THEM.

THE COURT: NO. NOBODY IS GOING TO SPEAK TO THEM. I WENT OVER THE MOTION AND I TOLD HIM HE WAS NEVER TO SPEAK AGAIN AS LONG AS HE WANTED TO HAVE AN ATTORNEY.

ALL RIGHT. I HAVE ALREADY RULED ON THESE MOTIONS AND THIS WAS, I BELIEVE, ONE OF THEM WAS, I THINK THAT HE WANTED -- I THINK THAT ACTUALLY HE WANTED A REHEARING OF THE MOTION. THE MOTION TO DISMISS THE INDICTMENT, ON THE GROUNDS SET FORTH IN THE MOTION IS DENIED. AND WITH RESPECT

TO THE MOTION FOR A SO-CALLED FAIR TRIAL, THAT MOTION IS LIKEWISE DENIED.

BY THE FIRST MOTION HE TAKES THE POSITION, THE MOTION TO DISMISS THE INDICTMENT, THAT THIS COURT OR THE U.S. DISTRICT COURT HAS NO JURISDICTION TO PASS ON THE CRIMINAL TAX OR ALLEGED CRIMINAL TAX STATUTE.

AND WITH RESPECT TO THE MOTION FOR A FAIR TRIAL, HE CONTENDS THAT NO JUDGE OF THE UNITED STATES DISTRICT COURT IN THE WHOLE OF THE UNITED STATES IS QUALIFIED TO SIT AS A JUDGE IN THIS CASE FOR THE REASON THAT THEY HAVE -- THAT EACH OF SUCH JUDGES HAS A CONFLICT OF INTEREST AND THAT MOTION IS DENIED. I NEED NOT SAY ANYTHING FURTHER ABOUT EITHER OF THEM IN VIEW OF THE LACK OF SUPPORT AND LAW FOR EITHER OF THE MOTIONS. AND I DIDN'T UNDERSTAND THAT YOU WERE HAVING ANY HEARING TODAY OF THE MOTION FOR AN ORDER TO PAY FOR AN EXPERIENCED TAX

ATTORNEY OF DEFENDANT'S CHOICE. IN ANY EVENT THAT IS DENIED BECAUSE IT IS ON THE CALENDAR. I HAD UNDERSTOOD THAT I HAD DENIED THAT BEFORE. IF IT IS FOR RECONSIDERATION, THE MOTION IS DENIED. AND I HAVE ALREADY PASSED ON THE MATTER WITH RESPECT TO GRAND JURY PROCEEDINGS. OF COURSE, MR. ROBBINS, YOU ARE ENTITLED TO IF -- I DON'T KNOW THAT HE EVER APPEARED BEFORE A GRAND JURY BUT IF HE DID, HE WOULD BE ENTITLED, OF COURSE, TO HAVE THE COPY OF HIS TESTIMONY.

MR. ROBBINS: YES. AND I WILL BE REQUESTING, YOUR HONOR, THAT IF THERE WERE OTHER WITNESSES BEFORE THE GRAND JURY THAT WE'LL -- MR. NIESEN AND I, I AM SURE, WILL AGREE ON AN ORDER SO THAT THEY TRANSCRIPTS CAN BE RELEASED AT AN APPROPRIATE TIME.

THE COURT: YES, I WILL SIGN THAT PART OF AN ORDER.

MR. ROBBINS: YOUR HONOR, THE ONLY

OTHER QUESTION THAT HAD ARISEN, DR. THOMASSEN HAS ASKED ME JUST TO CONFIRM FOR THE RECORD THAT A NOT GUILTY PLEA WAS ENTERED FOR HIM BY THE COURT.

THE COURT: YES. SURELY. WELL, THAT APPEARS IN THE RECORD.

MR. ROBBINS: YES. THANK YOU VERY MUCH, YOUR HONOR.

MR. NIESEN: THANK YOU, YOUR HONOR.

THE COURT: BY THE WAY, YOU MIGHT EXPLAIN TO HIM, MR. ROBBINS, THAT HAS BEEN A LONG, LONG TIME AND WELL-HONORED PRACTICE.

ALL RIGHT. VERY WELL.

THIS CASE IS SET FOR TRIAL, AS I RECALL, ON JUNE 28; SO, DR. THOMASSEN, YOU ARE ORDERED TO BE BACK HERE AT THAT TIME WITHOUT FURTHER NOTICE AT 10:00 O'CLOCK IN THE MORNING.

MR. ROBBINS: YES, YOUR HONOR. ONE OTHER THING THAT DR. THOMASSEN BROUGHT UP THAT HE WANTED. THERE WAS ONE OTHER

SMALL MATTER, YOUR HONOR. DR. THOMASSEN HAD LODGED A MOTION WHICH WAS NOT ACCEPTED OR HAD ATTEMPTED TO LODGE A MOTION AND AT THAT TIME, I WAS NOT AWARE THAT HE HAD BEEN ORDERED NOT TO FILE ANY MOTIONS. AND HE WAS CONCERNED BECAUSE MR. NIESEN -- HE WAS CONCERNED THAT HE MAY HAVE VIOLATED AN ORDER BUT AS I UNDERSTAND IT AT PRESENT --

THE COURT: THE MOTIONS WILL BE FILED BY COUNSEL.

MR. ROBBINS: THAT'S CORRECT BUT THERE IS NO CURRENT CONTEMPT. THAT IS JUST FOR THE RECORD, THAT THERE IS NO CURRENT ISSUE OF CONTEMPT?

THE COURT: VERY WELL.

MR. ROBBINS: THANK YOU VERY MUCH, YOUR HONOR.

MR. NIESEN: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT.

(WHEREUPON PROCEEDINGS IN THIS MATTER ADJOURNED) * * * * * * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(COPY)

ELMER H. THOMASSEN, Petitioner, vs. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, Respondent, UNITED STATES OF AMERICA, Real Party In Interest.	Filed Jun 24 1983 PHILLIP B. WINBERRY CLERK, U.S. COURT OF APPEALS No.83-7461 DC# CR 83-271-FCW Central California

ORDER

Before: SKOPIL and FERGUSON,
Circuit Judges

Petitioner's application for a writ of mandamus is denied. Petitioner has not demonstrated that the district court clearly abused its discretion in denying his motion for a continuance. The emergency motion for stay is denied as moot.

CR CAL 6/22/83SP

DOCKET: CR-83-00271-01

ODATE EVENT TEXT

04/06/83 INDIF Filed indictment (Doc: 1) (Dkt'd 04/07/83).

ORDBNDOR Order own recognizance bail set in the amount of $10,000.00 (MAGISTRATE (PENNE) (Dkt'd 04/07/83).

ODATE EVENT TEXT

Summons issued (Dkt'd 04/07/83).

#JS2 most severe count indicated(Counts 1-3) (Severity Code 215) (Dkt'd 04/07/83).

#Index key for JS- 2, 26.7201 (Dkt'd 04/07/83).

#JS2 County Code 6037 (Dkt'd 04/07/83).

04/18/83 Arraigment held (Counts 1-3)(PSA MK CONTACT W/DFT, NEW SUMMONS, WRIT TO BE ISSUED TO ENSURE THE PRESENCE OF THE DFT. PSA OFFICER D. ELIAS INFORMS THE CRT THAT DFT HAS BEEN CONTACTED AND IS AWARE OF CRT APPEARANCE.) (MAGISTRATE KRONENBERG) (Doc: 2) (Dkt'd 04/19/83).

Arraignment and plea continued to 04/25/83 at 8:30AM (Counts 1-3) (MAGISTRATE KRONENBERG) (dkt'd 04/19/83).

04/25/83 Filed own recognizance bond in amount of $10, 000.00 (MAGISTRATE MCMAHON) (Doc:3) (Dkt'd 04/25/83).

#Begin Released Interval (L-R) (Dkt'd 04/25/83).

Arraignment held (Counts 1-3) (DFT IS PRESENT. DFT. INFORMS THE CRT THAT HE DOES NOT WANT FPD OFFICE TO REPRESENT HIM DUE TO THE FACT OF LACK OF KNOWLEDGE OF TAX LAW. CRT ORDS THAT YOLANDA GOMEZ DFPD IS DESIGNATED TO REPRESENT DFT FOR THESE PROC & PLEA PROC. ONLY. DFT INFORMS THE CRT THAT HE IS ABLE TO HIRE PRIVATE CNSL. DFT REFUSES TO COMPLETE THE CJA 23, FINANCIAL AFFID. DFT INFORMS THE CRT THAT HE DIS NOT UNDERSTAND THE CONTENT OF THE CR FORM 44, STATEMENT OF DFT'S CONSTITUTIONAL

RIGHTS FORM. CRT READS THE CONTENTS OF THIS FORM TO THE DFT IN OPEN CRT. DFT IS GIVEN A COPY OF THE INDICTMENT AND THE CLERK READS THE INDICTMENT TO THE DFT IN OPEN CRT. DFT REFUSES TO SIGN HIS PR. BND. CRT INFORMS THE DFT THAT FAILURE TO SIGN HIS BND WILL CAUSE THE CRT TO REMAND HIM DFT SIGNS HIS $10,000 PR BND. CRT APPROVES THE BND. POSTED $10,000 PR.) (MAGISTRATE MCMAHON) (Doc: 4) (Dkt'd 04/26/83).

#Order case assigned to JUDGE WHELAN (MAGISTRATE MCMAHON) (Dkt'd 04/26/83).

Arraignment and plea continued to 04/26/83 at 1:45PM (Counts 1-3) (MAGISTRATE MCMAHON) (Dkt'd 04/26/83).

Defendant's first appearance (Dkt'd 04/26/83). #Start Minimum Non-Trial Interval (Dkt'd 04/26/83).

04/26/83 Arraignment held (Counts 1-3) (DFT IS PRESENT. DFPD YOLANDA GOMEZ MAKE A SPECIAL COURTEST APPEARANCE, BUT INASMUCH AS DFT HAS NOT COMPLETED THE FINANCIAL AFFID NECESSARY FOR CRT-APPTD CNSL, THE COURT EXCUSES DFPD GOMEZ. CRT BRIEFLY ADDRESSES THE MOTN OF DFT TO BE FURNISHED W/CERITIFIED COPY OF THE MINUTES OF THE GRAND JURY PROC. CRT INFORMS GVT CONSL AND DFT THAT INFO AS TO A QUORUM, ETC. SHOULD BE AVAILABLE IN THE OFFICE OF THE CLERK, AND INQUIRY SHOULD BE MADE THERETO. DFT REQUESTS A CONT OF HIS PL AND TRIAL SETTING TO ENABLE HIM TO RETAIN PRIVATE CNSL. DFT IS ADVISED THAT A PLEA MUST BE ENTERED ON THAT DATE WITH OR W/O CNSL. NO FUR CONT WILL BE GRANTED FOR ENTRY OF PLEA.) (JUDGE WHELAN) (Doc: 5) (Dkt'd 04/29/83).

Arraignment and plea continued to 05/09/83 at 1:30 PM (Counts 1-3) (CRT ORDS DFT TO RETURN AT THAT TIME) (JUDGE WHELAN) (Dkt'd 04/29/83).

Motion filed (MOT#1) (DFT IN PROPRIA PERSONAL FLD NOT OF MOTN AND MOTN FOR DFT TO BE FURNISHED WITH CERTIFIED COPY OF MINUTES OF GRAND JURY PROCEEDINGS, RET 4/26/83 at 1:45PM IN CRTRM 7) (Doc: 6) (Dkt'd 04/29/83).

Filed memorandum in support of motion (MOT#1) (DFT IN PROPRIA PERSONA FLD SUPPLEMENT TO MOTN FOR DFT TO BE FURNISHED WITH CERTIFIED COPY OF MINUTE OF GRAND JURY PROCEEDINGS WITH DECLARATION AND POINTS AND AUTHORITIES, RET. 5/23/83 at 9:30AM IN CRTRM 3) (Doc: 7) (Dkt'd 04/29/83).

05-08-83

Motion filed (MOT #2) (DFT IN PROPRIA PERSONA FLD NOT OF MOTN AND MOTN FOR AN ORD TO PAY FOR AN EXPERIENCED CRIMINAL TAX ATTY OF DFT'S CHOICE OR, IN THE ALTERNATIVE, ORD THE GVT TO RELEASE PROPERTY UNDER LIEN, POINTS AND AUTHORITIES & DECLARATION., RET 5/31/83 At 1:30 PM RM 7) (Doc: 8) (Dkt'd 05/09/83).

DFT IN PROPRIA PERSONA FLD REQUEST FOR CRT ORD CORRECTING THE RECORD (MINUTE ORD OF 4/26/83) RULE 36 (JUDICIAL NOTICE) (Doc: 9) (Dkt'd 05/09/83).

05-09-83

Motion to dismiss filed (MOT #3) (Counts 1-3) (DFT IN PROPRIA PERSONA FLD NOT OF MOTN BE DFT TO DISMISS THE INDICTMENT. RET. 5/31/83 at 1:30 PM RM7) (Doc: 10) (Dkt'd 05/09/83).

Motion filed (MOT#4) (DFT IN PROPRIA PERSONA FLD NOT OF MOTN BY DFT FOR A FAIR TRIAL RET. 5/31/83 at 1:30PM RM 7) (Doc: 11) (Dkt'd 05/09/83).

Motion filed (MOT#5) (DFT IN PROPRIA PERSONA)

FLD NOT OF DFT'S NOT MOTN RET 5/31/83 at 1:30 PM RM 7) (Doc:12) (Dkt'd 05/09/83).

Motion for continuance filed (MOT #6) (DFT IN PROPRIA PERSONA W/OUT ASSISTANCE OF CNSL, FLD MOTN FOR CONT IN ORDER TO OBTAIN ASSISTANCE OF CNSL (SIXTH AMENDMENT)) (Doc: 13) (Dkt'd 05/12/83).

Arraignment held (Counts 1-3) (DFT IS PRESENT W/O CRETD CNSL. CRT DENIES DFT'S MOTN FOR FUR CONT TO OBTAIN CNSL. CRT APPTS DFPD Y. GOMEZ TO REPRESENT DFT. DFT'S MOTN FOR ORD TO PAY FOR AN EXPERIENCED CRIMINAL TAX ATTY OF DFT'S CHOICE , OR IN THE ALTERNATIVE ORD THE GVT TO RELEASE PROP. HELD UNDER LIEN IS DENIED. DFT'S MOTN FOR DISMISSAL FOR LACK OF SUBJECT MATTER JURISDICTION IS DENIED.

DFT'S MOTN TO DISMISS FOR LACK OF PERSONAL JURISDICTION IS DENIED. DFT STATS TR/N AS CHARGED IN THE INDICTMENT CLERK READS INDICTMENT. DFT STATES HE DOES NOT UNDERSTAND THE INDICTMENT IN RESPONSE TO CLERK'S QUESTION AS TO HIS PLEA. CRT ENTERS PL FOR DFT OF NOT GUILTY AS TO ALL THREE CNTS. OF THE INDICTMENT DFT IS GRANTED PERSMISSION TO TRAVEL TO NEBRASKA ON BUSINESS AND IS ORD TO BE PRESENT FOR TRIAL. GVT INFORMS CRT THE JENKS ACT MATERIAL HAS BEEN PHOTOCOPIED AND WILL RETURNED OVER TO MS. GOMEZ FORTWITH.) (JUDGE WHELAN) (Doc: 14) (Dkt'd 05/12/83).

Defendant enters plea of not guilty (Counts 1-3) (JUDGE WHELAN) (Dkt'd 05/12/83).

Trial date set for 06/28/83 at 10:00AM (Counts 1-3) (DFT IS GRANTED PERMISSIN TO

TRAVEL TO NEBRASKA ON BUSINESS & IS ORD TO BE PRESENT FOR TRIAL W/O FUR NOTICE.) (JUDGE WHELAN)(Dkt'd 05/12/83).

Motion denied (MOT #2) (MOTN FOR ORD TO PAY FOR AN EXPERIENCED CRIMINAL TAX ATTY OF DFT'S CHOICE, OR IN THE ALTERNATICE ORD THE GVT TO RELEASE PROPERTY HELD UNDER LIEN IS DENIED.) (JUDGE WHELAN) (Dkt'd 05/12/83).

05-17-83

DFT FLD EX PARTE APPLICATION FOR ORD SHORTENING TIME, DECLARATION (Doc: 15) (Dkt'd 05/19/83).

Order filed (FLD ORD GRANTING DFT'S EX PARTE REQUEST FOR ORD SHORTENING TIME IN WHICH TO HEAR HIS MOTN TO BE RELIEVED AS CNSL IS GRANTED) (JUDGE WHELAN) (Doc: 16) (Dkt'd 05/19/83).

05-18-83 Motion filed (MOT #7) DFT FLD NOT OF MOTN. MOTN FOR RELIEF OF CNSL, DECLARATION OF CNSL, EXHIBIT, RET 5/18/83 at 2PM) (Doc: 17) (Dkt'd 05/19/83).

DFT IN PROPRIA PERSONA LODGED SUPPLEMENTAL DFT'S CNSL, RET 5/18/83 at 1:30 PM (PLACED IN THE FILE NOT USED, 5/19/83). (Doc: 18) (Dkt'd 05/20/83).

Status hearing held (RE HRG MOTN OF DFPD Y. GOMEZ FOR RELIEF OF CNSL. CRT HEARS ORAL ARGUMENT OF CNSL AND DENIES MOTN. CRT ORDS CLERK OF CRT NOT TO ACCEPT ANY DOCUMENTS SUBMITTED BY DR. THOMASSEN IN PRO PER, FOR LODGING FOR FILING. DFT IS REPRESENTED BY CNSL AND NOT IN PRO PER. CRT ORDS CLERK OF CRT TO ALLOW DFT TO SEE CLERK'S RECORD WHICH REFLECT THE NUMBER OF GRAND JURY MEMBERS PRESENT ON THE DATE THE INDICTMENT IN THIS CASE WAS RETURNED, IF

SUCH RECORD IS IN THE POSS OF THE CLERK. CRT ORDS THAT MOTNS FLD BY DFT BEFORE CNSL WAS APPTD INCLUDING TWO PREVIOUSLY RULED UPON, WILL BE HEARD ON 5/31/83 at 1:30 PM. THE MOTN TO BE FURNISHED WITH MINUTES OF GRAND JURY PRCDGS INSOFAR AS NOT PREVIOUSLY RULED UPON WILL BE HEARD 5/31/83 at 1:30PM RATHER THAN 5/23/83.

DFPD GOMEZ ADVISES CRT OF HER ANTICIPATED 3-WEEK ABSENCE FROM 5/20/83 THROUGH 6/13/83.

CRT CONFERS w/PD J. DUNN & ADVISES OF NEED TO ASSIGN ANOTHER DEPUTY TO WORK ON CASE. CRT ORDS AUSA TO TURN OVER DISCOVERY DOCUMENTS NLT 5/23/83.) (JUDGE WHELAN) (Doc:19) (Dkt'd 05/20/83).

Status hearing set for 05/19/83 at 1:30 PM (JUDGE WHELAN) (Dkt'd 05/20/83).

Motion granted in part: denied in part (MOT#1) (RE: MINUTE ORD, THE CRT HAVING CONSIDERED THE DFT's MOTN TO BE FURNISHED W/CERTIFIED COPY OF MINUTES OF GRAND JURY PROCEEDINGS FLD 4/26/83. IT IS HEREBY ORD. THAT THE CLERK OF CRT IS TO PROVIDE INFORMATION TO THE DFT AS TO THE NUMBER OF GRAND JURY MEMBERS PRESENT ON THE DATE THE INDICTMENT WAS RETURNED AND FLD. TO WIT: 4/6/83.) (JUDGE WHELAN) (Doc: 20) (Dkt'd 05/20/83).

05-19-83

Status hearing held (RE: FUR HRG: MOTN OF DFPD.Y. GOMEZ FOR RELIEF OF CNSL. DFT GOMEZ ADVISES THE CRT THAT FPD DUNN HAS RE-ASSIGNED THE DEFENSE OF THIS CASE TO DFPD BRIAN Q. ROBBINS, IF THIS IS ACCEPTABLE TO THE CRT. CRT ACCEPTS SUBSTITUTION OF DFPD ROBBINS AND EXCUSES DFPD GOMEZ. DFPD ROBBINS ADVISES CRT HE MAY NEED TO FILE MOTNS, INCLUDING

DISCOVERY, ON SHORTENED TIME. CRT ORDS ANY MOTNS FLD BY DFPD ROBBINS MAY BE HEARD ON 3 DAYS NOTICE. TRIAL WILL GO FORWARD AS SCHED ON 6/28/83 at 10AM. CRT INDICATES THAT SPEEDY TRIAL EXCLUDABLE TIME FINDING WOULD NOT BE MADE BY CRT BASED ON MOTNS BEING FLD.) (JUDGE WHELAN) (Doc: 21) (Dkt'd 05/20/83).

Attorney ROBBINS, BRIAN added to case (JUDGE WHELAN)(Dkt'd 05/20/83).

05-31-83

Reply to answer to motion to dismiss (Mot#3) (FLD RESPONSE TO THE US TO DFT"S MOTN FOR A FAIR TRIAL, FOR COPY OF MINUTES OF GRAND JURY PROCEEDINGS, TO DISMISS THE INDICTMENT FOR LACK OF JURISDICTION, TO PAY FOR CNSL OR DISMISS TAX LIENS.) (doc:22) (Dkt'd 05/27/83).

05-31-83 Status hearing held (DFTS' MOTN FOR AN ORD TO PAY FOR AN EXPERIENCED TAX ATTY OF DFTS CHOICE, OR IN THE ALT. ORD THE GVT TO RELEASE PROPERTY HELD UNDER LIEN (FLD 5/9/83) IS RECONSIDERED AND DENIED. DFTS' MOTN TO BE FURNISHED WITH CERTIFIED COPY OF MINUTES OF GRAND JURY PROCDS (FLD 4/26/83) HAS BEEN GRANTED PREVIOUSLY. COPY OF DFTS' TESTIMONYT IF ANY SHOULD BE FURNISHED BY GVT AT APPROPRIATE TIME. CRT ADVISES CNSL, CASE WILL COMMENCE TRIAL AS PREVIOUSLY SCHED ON 6/28/83 at 10 AM.) (JUDGE WHELAN) (Doc:23) (Dkt'd 06/01/83).

Motion denied (MOT #4) (DFT'S MOTN FOR A FAIR TRIAL IS HEARD AND DENIED. (FLD 5/9/83).) (JUDGE WHELAN) (Doc: 23) (Dkt'd 06/01/83).

Motion to dismiss denied (MOT#3) (DFTS' MOTN TO DISMISS THE INDICTMENT (FLD 5/9/83) IS RECONSIDERED AND DENIED AS TO THE

GROUNDS SET FORTH IN MOTN.) (JUDGE WHELAN) (Doc: 23) (Dkt'd 06/01/83).

06-10-83

Notice filed (FLD DFT'S NTC OF DEFENSE BASED ON MENTAL COND PURS R-12.2 of FRCP) (Doc: 24) (Dkt'd 06/10/83).

06-14-83

FLD EX PARTE APPLICATION FOR ORD COMPELLING DFT TO SUBMIT TO PSYCHIATRIC EXAMINATION, MEMO OF POINTS AND AUTHORITIES, DECLARATION OF JEFFREY S. NIESEN. (Doc:25) (Dkt'd 06/16/83).

06-15-83

Order filed (FLD ORD COMPELLING DFT TO SUBMIT TO PSYCHIATRIC EXAMINATION. IT IS HEREBY ORD THAT DFT SUBMIT TO A PSYCHIATRIC EXAM. IT IS FUR ORD THAT DR. JOHN STALBERG BE APPTD TO CONDUCT SUCH PSYSHIATRIC EXAMINATION ON BEHALF OF THE GVT. (JUDGE WHELAN) (Doc:26) (Dkt'd 06/16/83).

06-20-83 FLD GVT'S EX PARTE APPLICATION FOR ORD DISCLOSING GRAND JURY TESTIMONY, MEMO OF POINTS AND AUTHORITIES , DECLARATION (Doc:27) (Dkt'd 06/21/83).

Status hearing held (RE: HRG DFT'S ORAL MOTN FOR COMPETENCY HRG AND CONTI OF TRIAL SET FOR 6/28/83. DFT IS NOT PRESENT INASMUCH AS HE HAD AN APPOINTMENT WITH DR. JOHN STALBERG, THE GVT'S PSYCHIATRIST ORD BY THE CRT TO EXAMINIE BY DR. THOMASSEN THIS DATE. DEFENSE CNSL HAD REQUESTED AN IMMDIDIATE HRG ON COMPETENCY QUESTION DUE TO POSS CHANGE IN THE FORTHCOMING TRIAL DATE. GVT CONSL ADVISES CRT THAT DURING THEIR INTERVIEW OF WITNESSES, A SERIOUS QUESTION WAS RAISED AS TO THE DFT'S MENTAL CONDITNS AND THE GVT WAS OBLIGATED TO REVEAL THIS INFORMATION TO DEF CNSL. DEF CNSL REQUESTS CRT TO APPOINT A

PSYCHIATRIC TO EXAMINE THE DFT AND TO CONT THE TRIAL AT SUCH TIME AS A FULL REPORT AND HRG CAN BE HELD. THE CRT APPOINTS DR. FAERSTEIN TO EXAMINE DFT AND FINDS EXCLUDABLE TIME UNDER SPEEDY TRIAL ACT FOR SUCH EXAMINATION, REPORT AND HRG. CRT RE-SETS TRIAL FOR WED. 7/27/83 at 10AM. GVT ESTIMATES 4 DAYS FOR DIRECT TESTIMONY, DEFENSE ESTIMATES 2 DAYS FOR DEFENSE CASE. CNSL ARE TO PREPARE AND LODGE A JOINT ORDER RE EXCLUDABLE TIME.) (JUDGE WHELAN) (Doc:28) (Dkt'd 06/24/83).

Trial date reset to 07/27/83 at 10:00AM (Counts 1/3/) (JUDGE WHELAN) (Doc:28) (Dkt'd 06/24/83).

06-24-83

Notice filed (FLD NOT OF DFT'S FAILURE TO KEEP CRT ORD PSYCHIATRIC APPOINTMENT.) (Doc:29) (Dkt'd 06/27/83).

FLD EX PARTE MOTN TO COMPEL HANDWRITING EXEMPLARS BY DFT THOMASSEN MEMO OF POINTS AND AUTHORITIES, DECLARATION OF JEFFREYS NIESSEN (Doc: 30) (Dkt'd 06/27/83).

FLD EX PARTE APPLICATION FOR ORD SHORTENING TIME, DECLARATION OF JEFFREY S. NIESON (Doc: 31) (Dkt'd 06/27/83).

06-27-83

Motion filed (Mot#8) (FLD NOT OF MOTN AND MOTN TO PRECLUDE DFT'S USE OF EXPERT WITNESS TESTIMONY ON ISSUE OF DFT'S MENTAL STATE. RET 6/29/83 at 1:30PM) (Doc:32) (Dkt'd 06/28/83).

Order Filed (FLD GRANTING PLAINTIFF'S APPLICATION FOR ORD SHORTENING TIME. MOTN IS ORD FLD. AND HRG. ON SAID MOTN SET FOR 6/29/83 at 1:30PM) (JUDGE WHELAN) (Doc:33) (Dkt'd 06/28/83).

Hearing on pre-trial motions set for 06/29/83 at 1:30PM (Counts 1-3) (JUDGE WHELAN) (Dkt'd 06/28/83).

Order filed (FLD ORD. IT IS HEREBY ORD THAT DFT PROVIDE THE US GVT EXEMPLARS OF HIS HANDWRITING. THE HANDWRITING EXEMPLARS ARE TO BE GIVEN IN THE OFFICE OF THE US ATTY. ON 6/30/93 at 2PM) (JUDGE WHELAN) (Doc:34) (Dkt'd 06/28/83).

Exiting QUERY MODE.... ...

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALFIORNIA

October 1983 Grand Jury

UNITED STATES OF AMERICA, Plaintiff, v. ELMER H. THOMASSEN, Defendant.	CR 83-271 INDICTMENT (26 U.S.C.§7201: Income Tax Evasion)

COUNT ONE

(26 U.S.C. §7201)

During the calendar year 1976, defendant ELMER H. THOMASSEN, a resident of Newport Beach, California, had and received a taxable income of about $11,514.00; that upon said taxable income he owed to the United States of America income tax of $2,468.00; that he was required by law on or before April 15, 1977, to make an income tax return to the Internal Revenue Service, and to pay such income tax; that well knowing the foregoing facts, defendant ELMER H. THOMASSEN on or about April 15,

1977 in the Central District of California, did willfully and knowingly attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make such income tax return to the said Internal Revenue Service, and by failing to pay to said Internal Revenue Service, said income tax and by concealing and attempting to conceal from all proper officers of the United States of America his true and correct taxable income.

COUNT TWO

(26 U.S.C. §7201)

During the calendar year 1977, defendant ELMER H. THOMASSEN, a resident of Newport Beach, California, had and received a taxable income of about $26,369.00; that upon said taxable income he owed to the United States of America income tax of $8,204.00; that he was required by law on

or before April 15, 1978, to make an income tax return to the Internal Revenue Service, and to pay such income tax; that well knowing the foregoing facts, defendant ELMER H. THOMASSEN on or about April 15, 1978, in the Central District of California, did willfully and knowingly attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make such income tax return to the said Internal Revenue Service, and by failing to pay to said Internal Revenue Service, said income tax and by concealing and attempting to conceal from all proper officers of the United States of America his true and correct taxable income.

COUNT THREE

(26 U.S.C. §7201)

During the calendar year 1978, defendant ELMER H. THOMASSEN, a resident of

Newport Beach, California, had and received a taxable income of about $14,047.00; that upon said taxable income he owed to the United States of America income tax of $2,781.00; that he was required by law on or before April 15, 1979, to make an income tax; that well knowing the foregoing facts, defendant ELMER H. THOMASSEN on or about April 15, 1979, in the Central District of California, did willfully and knowingly attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make such income tax return to the said Internal Revenue Service, and by failing to pay to said Internal Revenue Service, said income tax and by concealing and attempt to conceal from all proper officials of the United States of America his true and correct taxable income.

A TRUE BILL

_____
Foreperson

STEPHEN S. TROTT
United States Attorney

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELMER H. THOMASSEN,

Petitioner

v.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT
OF CALIFORNIA,

Respondent

HON. FRANCIS C. WHELAN,
UNITED STATES DISTRICT JUDGE
and
UNITED STATES OF AMERICA,

Real Parties in Interest.

PETITION FOR WRIT OF MANDAMUS

Elmer H. Thomassen
Petitioner/Defendant
in propria persona
1918 Dover Drive
Newport Beach, CA
92660 (714) 540-4376

TABLE OF AUTHORITIES

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Miscellaneous Authorities

Time Interview of Chief Justice Burger, TIME, December 10, 1973 at 83 . 13

PRIMARY CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment VI:

> In all criminal prosections, the accused shall . . . have the assistance of counsel for his defense.

Constitution of the United States, Amendment XIV:

> Sec. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF ISSUES PRESENTED

I. WHETHER IT IS AN ABUSE OF DISCRETION TO DENY A MOTION FOR A CONTINUANCE TO OBTAIN EFFECTIVE ASSISTANCE OF COUNSEL WHEN THE MOTION IS MADE SEVEN WEEKS BEFORE TRIAL AND THERE IS EVIDENCE PRESENTED THAT DEFENDANT'S COURT APPOINTED COUNSEL AND DEFENDANT ARE EMBROILED IN IRRECONCILABLE DIFFERENCES PREVENTING PREPARATION FOR TRIAL.

II. WHETHER IT IS AN ABUSE OF DISCRETION TO DENY A MOTION FOR A CONTINUANCE TO OBTAIN COMPETENT ASSISTANCE OF COUNSEL WHEN THE MOTION IS MADE SEVEN WEEKS BEFORE TRIAL AND THERE IS EVIDENCE PRESENTED THAT DEFENDANT'S COURT APPOINTED COUNSEL IS INCOMPETENT TO REPRESENT DEFENDANT IN A CRIMINAL TAX TRIAL.

III. WHETHER IT IS ERROR TO COMPEL DEFENDANT TO BE REPRESENTED BY COURT-APPOINTED COUNSEL WHO IS NOT EXPERIENCED IN CRIMINAL TAX TRIALS WHEN DEFENDANT INDICATES THAT HE HAS NO CONFIDENCE IN THE COMPETENCY OF THE COURT-APPOINTED ATTORNEY AND WHEN DEFENDANT REQUESTS THAT THE COURT PAY FOR OR APPOINT AN EXPERIENCED CRIMINAL TAX TRIAL ATTORNEY.

IV. WHETHER IT IS ERROR TO COMPEL DEFENDANT TO BE REPRESENTED BY COURT-APPOINTED COUNSEL FROM THE FEDERAL PUBLIC DEFENDERS OFFICE WHO HAVE NO BACKGROUND IN TAX LAW WHEN DEFENDANT IS CHARGED WITH TAX EVASION AND WHEN ATTORNEYS ON THE INDIGENT PANEL HAVE A BACKGROUND IN CRIMINAL TAX LAW.

V. WHETHER THE COURT HAS JURISDICTION TO ORDER THE UNITED STATES TO RELEASE TAX LIENS SO THAT DEFENDANT IS CAPABLE OF OBTAINING FUNDS FROM HIS PROPERTY TO PAY FOR AN ATTORNEY OF HIS CHOICE.

PETITION FOR WRIT OF MANDAMUS

The Petitioner/Defendant ELMER H. THOMASSEN, respectfully petitions this Court to issue a Writ of Mandamus to require the United States District Court for the Central District of California, Los Angeles, to grant petitioner/defendant a continuance to obtain effective assistance of counsel and to pay for an experienced criminal tax trial attorney or appoint an experienced criminal tax trial attorney at the Government's expense, or, in the alternative, to order the Government to release the I.R.S. Tax Liens against defendant's property so that defendant may obtain a loan to pay for an attorney of choice.

STATEMENT OF THE CASE

On April 6, 1983 petitioner/defendant ELMER H. THOMASSEN was indicted for three counts of Income Tax Evasion, 26

U.S.C.§ 7201 (Appendix to Petition for Writ of Mandamus, hereafter designated: "App.," App. at A-13).

At the date scheduled for arraignment, April 25, 1983, defendant indicated he did not understand the forms presented to him and expressed a desire to attempt to obtain private counsel of his choice. Defendant indicated his lack of confidence in the Federal Public Defender's Office because of their lack of knowledge in tax law and criminal tax trials. The Court below granted defendant two weeks' continuance until May 9, 1983 to obtain counsel. (Docket entry and Criminal Minutes for April 25, 1983, App. A-1 and A-9) Defendant was placed on a Personal Recognizance Bond of $10,000.00. (App. at A-18)

On May 9, 1983 the arraignment took place. Defendant had been unable to

REASONS FOR GRANTING THE WRIT

WRIT OF MANDAMUS IS THE ONLY ADEQUATE REMEDY FOR PETITIONER/DEFENDANT

A Writ of Mandamus is the only adequate remedy for petitioner/defendant Elmer H. Thomassen because defendant is prohibited by the court below from lodging or filing any papers or pleadings and defendant's court appointed attorney has refused to file for relief in the court below. The Court has ordered defendant to stop lodging or filing papers below (Transcript of 5-18-83, App. at A-24). The court-appointed attorneys have not responded to defendant's letters requesting them to file motions and/or writs (Letters, App. A-107 to 129)

The court-appointed attorneys for petitioner/defendant Elmer H. Thomassen have filed no pre-trial motions to assist

defendant and unless this court intervenes to assist defendant, the trial will proceed on schedule on June 28, 1983 without any effective assistance of counsel at all. 28 U.S.C. 1651 envisions just such circumstance as the case herein to aid a petitioner with extraordinary aid to prevent an injustice and violation of rights in the Court below.

IT IS IN THE INTEREST OF THE FAIR ADMINISTRATION OF JUSTICE AND IN THE INTEREST OF PROTECTING DEFENDANT'S DUE PROCESS RIGHTS TO ADEQUATE REPRESENTATION BY COUNSEL TO GRANT A WRIT OF MANDAMUS PRIOR TO THE TRIAL OF THE DEFENDANT

Unless this Court grants a Writ of Mandamus ordering the District Court below to appoint defendant below competent counsel, defendant's due process rights to adequate representation by counsel

guaranteed by the Sixth and Fourtheenth Amendments to the U.S. Constitution will be violated and the defendant will be forced to go through the ordeal of a lengtny and costly trial without adequate representation. An appeal at the end of the trial would not be adequate when the court knows in advance that defendant is not being adequately represented.

Proceeding with trial of the defendant on June 28, 1983 without providing defendant with adequate assistance of counsel will cause the court to incur judicial waste of the court's time and the taxpayer's money. In addition, it will cause a waste of the defendant's time and money also, because it will take him away from his medical practice which is already suffering during his pending bankruptcy proceedings, and will cause him to lose patients and money unnecessarily be-

cause of the need for a second trial at the conclusion of the first trial.

In considering whether to grant a continuance of the trial to permit the determination of the question of adequacy of representation by counsel in the court below, the Court must balance the right to adequate representative by counsel and the general interest in prompt and efficient administration of justice. In the case at hand, where the voilation of defendant's due process rights are so blatant, this Court should grant the Writ of Mandamus to supervise the District Court below relative to defendant's right to effective assistance of counsel.

DEFENDANT ELMER H. THOMASSEN IS BEING DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL

The Sixth Admendment provides that "In all criminal prosecutions, the accused shall enjoy the right. . . .

to have the assistance of counsel for his defense." A series of Supreme Court decisions over the last 50 years have established that under the Sixth and Fourteenth Amendments a defendant in a state or federal court must be afforded the right to the assistance of counsel, either retained or appointed, before he can be validly convicted and imprisoned. Powell v. Alabama, 287 U.S. 45 (1932); Johnson v. Zerbst 304 U.S. 458 (1938); Gideon v. Wainwright, 372 U.S. 335 (1963); Argersinger v. Hamlin, 407 U.S. 25 (1972).

a. It was an abuse of discretion to deny a continuance to defendant to obtain competent counsel when the motion was made seven weeks before trial and where there is an irreconcilable conflict between the defendant and the court appointed counsel.

On the issue of whether it is error to compel one charged with a serious

crime to undergo a trial with the assistance of an attorney with whom he has become embroiled in irreconcilable conflict, and whether it is an abuse of discretion not to grant a continuance to appoint another attorney, Brown v. Craven, 424 F.2d 1166 (9th Cir. 1976) is controlling in this Circuit. U.S. v. Williams 594 F.2d 1958 (9th Cir. 1979) considered Brown v. Craven, supra as controlling and held that on similar facts, it was error to deny substitution of court-appointed counsel where a motion was made more than a month before trial for substitution of counsel because of the total imcompatibility between defendant and his appointed counsel. In Brown v. Craven, supra the defendant chose to keep his court appointed attorney rather than be forced to appear pro se and in U.S. v. Williams the defendant chose to represent himself pro se rather than to continue be repre-

sented by his court appointed attorney. In both cases the defendant was convicted and his defense was a disaster.

In the case at hand, defendant, Elmer H. Thomassen has become embroiled in irreconcilable differences with his court appointed attorney Brian Q. Robbins and his predecessor Yolanda Gomez who are Deputy Federal Public Defenders and who were appointed by Honorable Francis C. Welan below. Counsel Gomez was relieved as court-appointed attorney for defendant because of a time conflict prohibiting her from preparing for the trial.

Defendant Elmer H. Thomassen made a motion for a continuance to obtain [competent] assitance of counsel seven weeks before trial on May 9, 1983 and made his motion for an experienced criminal tax attorney paid for by the Govenment also on

May 9, 1983, seven weeks prior to trial, which was adequate time for the court to consider and grant such motions, without affecting the fair adaminstration of justice or the court's trial schedule.

If the Court does not grant defendant a continuance to obtain a competent experienced criminal tax attorney and if the Court does not provide defendant with an attorney with experience in criminal tax trials defendant's trial will be a mockery of justice and defendant will be denied effective assistance of counsel. Defendant does not have a court-appointed attorney who is acting as an advocate. On the contrary, his public defender is doing everything in his power to prevent him from exercising his constitutional right to a fair trail. The Sixth Amendment guarantees the indigent defendant that he be given a court appointed coun-

sel who functions as an advocate, as opposed to that amicus curiae. Ellis v. U. S. 356 U.S. 674 (1958).

b. Morris v. Slappy is not controlling in the instant case

The Supreme Court of the United States recently held in Morris v. Slappy, Slip Opinion, Decided April 30, 1983, No. 81-1095, that the defendant is not entitled to a "meaningful relationship" with his attorney. The case at hand can be distinguished from Morris v. Slappy, supra as follows:

In the case at hand the defendant is not asking for a "meaningful relationship" with his attorney but he is asking for a competent attorney to give him effective assistance of counsel. Defendant's attorneys have done nothing to assist him in preparation for his trial and in fact have even refused to file motions, refused to

argue motions that were filed prior to their entry of appearance, refused to communicate with defendant, and refused to inform defendant of responses to motions which defendant made while he was still pro se.

Defendant has no confidence in his court appointed Deputy Federal Public Defenders because of their lack of background or experience in criminal tax law.

Defendant made timely motions for a continuance to obtain [competent] assistance of counsel (App. at A-88) and a timely "motion for an Order to Pay for an Experienced Criminal Tax Attorney of Defendant's Choice, or, in the Alternative, Order the Government to Release Property held under Lien." (App. at A-37)

In Morris v. Slappy, supra, the defendant asked for a continuance only a few days before trial in order to give his

newly court-appointed attorney time to prepare. However, his attorney indicated he was prepared. In Morris v. Slappy, supra, the defendant asked for a continuance only a few days before trial, and only in order to give his newly court-appointed attorney time to prepare. He was not dissatisfied with his attorney at that time. However, his attorney indicated that he was prepared. In Morris v. Slappy, supra it wasn't until the Third Day of trial that defendant indicated a dissatisfaction with his attorney, which was too late to ask for a replacement. In the case at hand, the defendant filed his motions for a continuance and for another attorney seven seeks prior to trial.

In the instant case defendant's court-appointed attorneys have done noth- to further defendant's defense at trial and are totally ineffective as counsel

in preparation of his case and incompetent to handle his criminal tax case.They haven't filed even one pre-trial motion.

c. Defendant Elmer H. Thomassen is entitled under the Sixth Amendment to competent assistance of counsel and it is error to require defendant to stand trial with court-appointed counsel who has no experience or educational qualifications in criminal tax law or tax trials

From the very beginning of the case below, at the arrignment, defendant indicated his dissatisfaction with representation by the Federal Public Defender's Office because of their lack of knowledge in tax law and criminal tax trial experience. Defendant has attempted to obtain an experienced criminal tax attorney on his own; however, because of the lack of sufficient funds he was unable to do so;

and he has requested that the court appoint him an attorney with experience in criminal tax trials. (Motions, App. at 37 and App. at 88) (Declaration, App. at A-40 and A-90)

Defendant's court-appointed Deputy Federal Public Defender Yolanda Gomez made a motion to the court six weeks before trial to be permitted to be relieved as counsel for defendant and because of her lack of familiarity with tax law and tax trials and because of irreconciable conflicts with the defendant. (App. A-95) In her motion she suggested to the court that it appoint an attorney for the defendant from the indigent panel since there are attorneys on that panel who are familiar with tax law and have a background in it. (See Motion, App. at A-100) The motion was denied; although Ms. Gomez was relieved as counsel for defendant for

other reasons (Docket, App. at A-5)

Tax law is a highly specialized field of law which has become recognized by the State Bar of California as one of the specialized areas which requires additional education after law school in order for an attorney to hold himself out to the public as proficient in the field of tax law. None of deputy public defenders at the Federal Public Defender's Office in Los Angeles have such a specialization; nor do any of them have the background of experience in tax law which would qualify them as competent to represent defendant Elmer H. Thomassen in his tax trial herein.

In evaluating the competency of the attorneys of the Federal Public Defender's Office in their ability to handle a highly specialized area as a criminal tax trial, the court should consider Chief Justice Burger's conclusion that as many as one-half of all attorneys appearing in

court are incompetent professionally. He would require special training of an attorney before he could become a trial advocate. TIME, Dec. 10, 1973, at 83. If a trial advocate, in general, needs additional training to appear in court, then a trial advocate who tries a case in such a specialized area as criminal tax law, with no specialized tax training, is even more incompetent if he represents a defendant in such a trial. Ms. Gomez of the Federal Public Defenders' Office by her own admission, indicated that the Federal Public Defenders had no one on their staff with a background in tax law (Motion, App. at A-100), but that there were attorneys on the indigent panel who have a background in tax law.

Permitting a Deputy Federal Public Defender to represent defendant Elmer H. Thomassen in a criminal tax trial when the

court knows he is not competent in the area of criminal tax trials is a violation of Rule 66-101(1) of the Rules of Professional Conduct of the State Bar of California, which states as follows:

> Rule 6-101. Failing to Act Competently.
>
> A member of the State Bar shall not wilfully or habitually
>
> (1) Perform legal services for a client or clients if he knows or reasonably should know that he does not posses the learning and skill ordinarily possessed by lawyers in good standing who perform, but do not specialize in, similar services practicing in the same or similar locality and under similar circumstances unless he associates or, where appropriate, professionally consults another lawyer who he reasonably be-

lieves does possess the requisite learning and skill.

The attorneys who represent indigents or defendants who are unable to raise the funds for their representation should be required to meet the same standards of professional conduct as other attorneys in the State of California.The standards of professional conduct have been instituted in order to protect the public, including the defendant.For the court to appoint an attorney who does not meet the standard above required by the State Bar is to provide a defendant with incompetent counsel in violation of the Sixth Amendment and Fourteenth Amendment to the U. S. Constitution. None of the attorneys employed by the Federal Public Defenders Office, including Deputy Public Brian Q. Robbins, is competent to try defendant's criminal tax case because of their lack of tax knowledge and lack of

experience in criminal tax trials.

The court below should appoint an attorney for defendant from the indigent panel for the District below, who has experience in criminal tax trials or provide the funds to permit defendant to obtain a criminal tax attorney of his choice.

Another alternative would be to order the United States to release the I.R.S. tax liens against defendant's property to enable him to obtain funds for a retainer to retain a competent experienced tax attorney of his choice.

CONCLUSION

For the foregoing reasons, Petitioner/Defendant Elmer H. Thomassen, respectfully petitions this Court to issue a Writ of Mandamus to require the United States District Court for the Central District of California, Los Angeles, to grant

petitioner/defendant a continuance to obtian effective assistance of counsel and to pay for an experienced criminal tax trial attorney at the Government's expense or in the alternative, to order the Government to release the I.R.S. Tax Liens against defendant's property so that defendant may obtain a loan to pay for an attorney of his choice.

Respectfully submitted,

/s/E. H. THOMASSEN

Elmer H. Thomassen, in propria persona, petitioner/defendant

STATE OF CALIFORNIA FILED: 6-22-83

COUNTY OF ORANGE

CERTIFICATE OF SERVICE

I, Elmer H. Thomassen, petitioner/ defendant herein declare, under penalty of perjury, the following is true and correct:

That I am a resident of Orange County in the State of California, I am over the age of eighteen years and my address is 1918 Dover Drive, Newport Beach, Calif 92660.

On June 22,1983, I personally delivered a copy of the foregoing Peition for Writ of Mandamus and Appendix to Petition for Writ of Mandamus on the real parties in interest herein by hand delivering the copies as follows:

UNITED STATE ATTORNEY
BY: Jeffrey Niesen, AUSA
1200 United States Courthouse
312 N. Spring Street
Los Angeles, Calif. 90012

JAMES R. DUNN
FEDERAL PUBLIC DEFENDER
by: Brian Q. Robbins
312 N. Spring Street
Los Angeles Calif. 90011

Hon. Francis C. Whelan
U.S. District Judge
U.S. District Court for the Southern District of California
312 North Spring Street
Los Angeles, Calif. 90012

This certificate is executed on June 22, 1983, at Newport Beach, California.

/s/E. H. THOMASSEN
Elmer H. Thomassen

E. H. THOMASSEN
1918 DOVER PLACE
NEWPORT BEACH, CALIFORNIA 92663
714-540-4376

Filed
5/9/83

DEFENDANT IN PROPRIA PERSONA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, PLAINTIFF, V. ELMER H. THOMASSEN, DEFENDANT.	CR-83-271 FW NOTICE OF MOTION FOR AN ORDER TO PAY FOR AN EXPERIENCED CRIMINAL TAX ATTORNEY OF DEFENDANT'S CHOICE OR, IN THE ALTERNATIVE, ORDER THE GOVERNMENT TO RELEASE PROPERTY HELD UNDER LIEN, POINTS AND AUTHORITIES & DECLARATION DATE: 5-31-83 TIME: 1:30 P.M. PLACE: Rm. 7

(SPECIAL APPEARANCE)

PLEASE TAKE NOTICE THAT defendant

ELMER H. THOMASSEN, will, on, May 31, 1983, at 1:30 P.M., or as soon thereafter as the court can proceed on this matter, at 312 North Spring Street, Los Angeles, California, move, and do does move, for an order to pay for experienced criminal tax counsel of the defendant's choice to be present at all stages of this case, including the arraignment procedure, such counsel's fees to be paid by the govenment or, in the alternative, order the lien, so such property can be pledged as collateral to raise funds to pay for an experienced criminal tax attorney.

The basis for this motion will be this notice and motion, the government's records and files in this and related cases, the attached memorandum of points and authorities, declaration of defendant Elmer H. Thomassen, with exhibits, any

oral or written testimony to be introduced at the hearing, and any supplemental documents or information that my be needed at the hearing.

DATED: May 6, 1983

Respectfully submitted,

/s/ E. H. THOMASSEN
E. H. THOMASSEN
Defendant in propria persona

MEMORANDUM OF POINTS AND AUTHORITIES

WITH ARGUMENT:

In all criminal prosecutions, the accused shall enjoy. . . the right to . . . have the assistance of Counsel for his defence. AMENDMENT VI, UNITED STATES CONSTITUTION

Financial inability as considered for purposes of 18 USCS, Section 3006 A does not mean indigency; the defendant does not have to be destitute to be eligible for appointment of counsel. The court need only be satisfied that representation essential to adequate defense (emphasis added) is beyond means of the defendant. 18 USCS CRIMES AND CRIMINAL PROCEDURE

Furthermore, the title of Section 3006A, i.e., ADEQUATE REPRESENTATION OF DEFENDANTS, emphasizes the importance to the defendant, "in a case in which he faces loss of

liberty," of experienced, skilled criminal tax counsel.

DEFENDANT IS ENTITLED TO HAVE AN EXPERIENCED CRIMINAL TAX ATTORNEY ASSISTING HIM AT THE ARRAIGNMENT.

In Hamilton v. Alabama the court stated: ". . . we have said enough to show. . . it (arraignment) is a critical stage in a criminal proceeding. What happens there may effect the whole trial." Hamilton v. Alabama 368 U.S. 54

This same principle of having adequate assistance of counsel present at the arraignment was reaffirmed in White v. Maryland 373 U.S. 59.

DECLARATION OF E. H. THOMASSEN IN SUPPORT OF MOTION FOR AN ORDER TO PAY FOR AN EXPERIENCED CRIMINAL TAX ATTORNEY OF DEFENDANT'S CHOICE OR, IN THE ALTERNATIVE, ORDER THE GOVERNMENT TO RELEASE PROPERTY HELD UNDER LIEN

I, E.H. THOMASSEN, STATE:

1. I am the defendant in this action. (83271 criminal)

2. This declaration is made in support of my motion for an order for the government to pay for an experienced criminal tax attorney of defendant's choice or, in the alternative, order the government to release property held under lien.

3. This court, on April 26, 1983, gave the defendant permission to visit Arthur P. Tranakos, Esquire, Suite 809, Standard Federal Savings

Building, 41 Mariette Street, N.W., Atlanta, Georgia 30303, Telephone 404/577-3430.

4. Mr. Tranakos has agreed to be counsel in this case for an estimated fee of $20,000.00 (see exhibit a)

5. I do not have the funds to pay Mr. Tranakos.

6. I have been unable to borrow the necessary money. (See Exhibit B and C.)

7. If the court will order the government to release property which it holds under lien, such property could be pledged as collateral for a loan to raise funds to pay for an experienced criminal tax attorney.

8. Exhibits A, B. and C are attached hereto and incorporated into this declaration by

reference and made a part of this declaration.

Dated: May 6, 1983

/s/E. H. Thomassen
E.H. Thomassen
Defendant in propria persona

ARTHUR P. TRANAKOS
Attorney at Law
Suite 809 Anchor Savings Bank Building
41 Marietta Street, N.W.

Arthur P. Tranakos (Ga. and Va.)
Barry L. Zipperman
Robert F. Webb
Georgina L. Todd
Ray H. Ledford (Ga. and Tenn.)

Atlanta, Georgia 30303
Telephone 404-577-3430

May 3, 1983

HAND DELIVERY

Dr. E. H. Thomassen
1918 Dover Drive
Newport Beach, California 92663

Re: Legal Services

Dear Dr. Thomassen:

This will confirm our conference relative to my representing you in your impending Federal Tax Indictment. I estimate that the fee for the trial of your case will be approximately $20,000.00.

I am available to commence work in this matter as soon as you have made satisfactory fee arrangements, commensurate with my other litigation schedule.

Yours very truly,

Arthur P. Tranakos

APT/hlb

Post Office Box 59

Pima Arizona 85543

April 27, 1983

E.H. Thomassen, M.D.

408 Westminster Avenue

Newport Beach, California

Dear Dr. Thomassen:

Re: Your request for a loan

Due to circumstances beyond my control, I am unable to accomodate you or loan you any money, much less the $15,000 that you requested.

My prayers are with you, and God bless you.

Sincerely yours,

James Saline

Law Offices
of
COSTANTINOU & MOENCKMEIER, P.C.
A Professional Corporation
Attorneys at Law

Telephone (314) 428-8448
8326 Lackland Road
St. Louis, Missouri 63114

ROBERT G. COSTANTINOU
JEANENE MOENCKMEIER
MARTA H. TILNEY

April 29, 1983

TO WHOM IT MAY CONCERN:

Doctor Elmer H. Thomassen has asked me for a loan for $20,000.00 for defense purposes. Dr. Thomassen already owes this firm money for representing him in a Bankruptcy proceeding and accordingly we turned him down.

Sincerely,

R. Costantinou

E. H. THOMASSEN
1918 Dover Drive
Newport Beach, California 92663
714-540-4376

filed
5/9/83

DEFENDANT IN PROPRIA PERSONA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, PLAINTIFF, V. ELMER H. THOMASSEN, DEFENDANT.	CR 83-271FW REQUEST FOR COURT ORDER CORRECTING THE RECORD (MINUTE ORDER OF APRIL 26, 1983) RULE 36

Defendant ELMER H. THOMASSEN hereby requests that the court order correction of a clerical mistake that appears in lines 5 and 6 of the minutes order of April 25, 1983.

The defendant's statement was mis-

stated and misunderstood.

The court is asked to take judicial notice of the fact that ability to hire private counsel is conditioned by the ability to pay for such counsel.

This request for record correction is supported by the defendant's declaration attached hereto and incorporated herein by reference.

DATED: May 6, 1983

Respectfully submitted,
/s/ E. H. THOMSSEN
E.H. THOMASSEN, in pro per

DECLARATION OF E. H. THOMASSEN IN SUPPORT OF REQUEST FOR COURT ORDER CORRECTING THE RECORD OF CRIMINAL MINUTES DATED APRIL 25, 1983 (PER RULE 36, FEDERAL RULES OF CRIMINAL PROCEDURE)

I, E. H. THOMASSEN, state:

1. I am the defendant in this action.

2. In the criminal minutes by the deputy clerk covering the hearing before James W. McMahon, Magistrate, on April 25, 1983, lines 5 and 6 states: "Defendant informs the court that he is able to hire private counsel." This statement is erroneous.

3. I was attempting to tell the court that I would try to obtain private counsel, because counsel provided by the court was ineffective and had no previous criminal tax trial experience.

4. This lack of criminal tax

experience was admitted by the counsel provided by the court.

5. The ineffectiveness of the counsel provided by the court was evidenced by her lack of any attempt to file any prearraignment motions.

Under penalty of perjury, I declare the above declaration to be true and correct of my own knowledge and belief.

EXECUTED AT NEWPORT BEACH, CALIFORNIA, THIS 6TH OF MAY, 1983.

/s/ E. H. THOMASSEN

E.H. THOMASSEN
Defendant in propria persona

E.H. THOMASSEN
1918 DOVER DRIVER
NEWPORT BEACH, CALIFORNIA 92663
714-549-4376

filed
5/9/83

DEFENDANT IN PROPRIA PERSONA' WITHOUT ASSISTANCE OF COUNSEL

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, PLAINTIFF, V. ELMER H. THOMASSEN, DEFENDANT,	CR83-271 FW MOTION FOR CONTINUANCE IN ORDER TO OBTIAN ASSISTANCE OF COUNSEL (SIXTH AMENDMENT)

Defendant ELMER H. THOMASSEN, WITHOUT ASSISTANCE OF COUNSEL, hereby moves, and will so move, the court to grant him an continuance in order to obtain assistance of counsel for arraignment and every stage of this procedure.

The defendant demands counsel for

every step of the proceedings. "The right to heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated laymen has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the

danger of conviction because he does not know how to establish his innocence." Id., at 68-69 The United States Law Week 51 LW 4405 (4-19-83)

This defendant requests a reasonable continuance. Mr. Tranakos agreed to be present in the court on May 31, 1983 to hear pre-arraignment motion or for whatever purpose the court may deem advisable.

DATED:May 9, 1983 Respectfully submitted,

/s/E. H. THOMASSEN
E.H. THOMASSEN
Defendant without benefit of counsel.

DECLARATION OF E. H. THOMASSEN, DEFENDANT WITHOUT COUNSEL, IN SUPPORT OF MOTION FOR CONTINUANCE TO OBTAIN COUNSEL BEFORE ARRAIGNMENT

I, E. H. THOMASSEN, DECLARE:

1. I am the defendant without counsel in this action.

2. I have obeyed the court order of April 26, 1983, to the best of my ability.

3. The fact that I have been unable to have counsel present in the courtroom today is a matter beyond my control.

4. I have contacted and interviewed four attorneys who have agreed to accept my case provided I can pay a retainer in advance.

5. The four attorneys are as follows:

Arthur P. Tranakos,
809 Federal Financial Savings Bldg.
Atlanta, Georgia, Telephone
404-577-3430

Donald Macpherson
Phoenix, Arizona

Mr. D'Amico, San Diego, Ca.

Mr. Earl Durham
San Diego, California

6. In addition, I contacted Mr. Robert Costantinau by telephone this afternoon, area 314/424-8448 [428-8448], St. Louis, Mo.

7. Mr. Costantinou instructed me to advise the court that any attorney the court would hire or appoint would not be acceptable because they would want to go ahead with an improper indictment and arraignment without giving me my constitutional rights. He stated I should ask the court to appoint one of the several attorneys I have contacted and order the attorney to be paid by a third party.

8. Only an attorney who has a true

interest in my case could assist me within the meaning of the sixth amendment of the Bill of Rights.

9. I have perused the case of Morris v. Slappy as best I could in the short time allowed me by the court.

10. In no place could I find the arraignment procedure mentioned. However, arraignment is mentioned explicitly in Hamilton v. Alabama 368 U.S. 54 wherein the court stated: "...we have said enough to show...it (the arraignment) is a critical stage in a criminal proceeding. What happens there may effect the whole trial."

11. I have patients waiting in my office at 408 Westminster Avenue, Newport Beach, California, Telephone 714-540-4376.

12. I would ask that the court allow me to see these patients before incarcerating me for standing on my constitutional rights.

13. If necessary to satisfy the court, I would be able to report for incarceration by midnight tonight or in the morning.

Under penalty of perjury, I declare the above to be true and correct to the best of my knowledge and belief.

EXECUTED AT LOS ANGELES, CALIFORNIA, THIS 9th day of May, 1983.

Respectfully submitted,

/s/E.H. Thomassen
E. H. THOMASSEN, M.D.
Defendant without benefit of assistance of counsel.

Rec'd in Court 4:50 p.m.

5/9/83 W.J.Landers
AUSA

JAMES R. DUNN
Federal Public Defender
YOLANDA BARRERA GOMEZ
Deputy Federal Public Defender
1503 United States Court House
312 N. Spring Street
Los Angeles, California 90012
Telephone No (213) 688-4786

Attorneys for Defendant
ELMER H. THOMASSEN

rec'd
5/16/83
filed
5/18/83

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ELMER H. THOMASSEN, Defendant.	NO. CR 83-271 FCW NOTICE OF MOTION; MOTION FOR RELIEF OF COUNSEL; DECLARATION OF COUNSEL; EXHIBIT Hearing Date: Time:

TO: UNITED STATES ATTORNEY STEPHEN S. TROTT AND ASSISTANT UNITED STATES ATTORNEY JEFFREY S. NIESEN:

PLEASE TAKE NOTICE that on

in the courtroom of the Honorable Francis C. Whelan, United States District Judge, defendant ELMER H. THOMASSEN, will bring on for hearing the following motion:

M O T I O N

The defendant ELMER H. THOMASSEN, by and through his attorney, Yolanda Barrera Gomez, Deputy Federal Public Defender, hereby moves this Honorable Court for an order relieving counsel of record, Yolanda Barrera Gomez from this case.

This motion is based on the attached points and authorities, the declaration of counsel, the attached exhibit and any and all evidence which may be adduced on the hearing of this motion.

DATED: May 13, 1983

Respectfully submitted,
JAMES R. DUNN
FEDERAL PUBLIC DEFENDER
BY /s/YOLANDA BARRERA GOMEZ
YOLANDA BARRERA GOMEZ
Deputy Federal Public Defender

MEMORANDUM OF POINTS AND AUTHORITIES

I

PRELIMINARY STATEMENT

On April 25, 1983, Dr. THOMASSEN appeared before the Honorable Magistrate James W. McMahon for arraignment. Dr. THOMASSEN objected to the jurisdiction of the court and objected to the arraignment. He refused to sign the statement of Rights and refused to sign a financial affidavit. The case was assigned to Judge Whelan. Dr. THOMASSEN and Deputy Federal Public Defender Yolanda Barrera Gomez was requested to appear before Judge Whelan on April 26, 1983, at 1:45 p.m. On April 26, 1983, Dr. THOMASSEN and Deputy Federal Public Defender Gomez appeared before Judge Whelan. Judge Whelan stated that since Dr. THOMASSEN had failed to complete the financial affidavit, Deputy Federal Public Defender Gomez was relieved.

On May 9, 1983, a call was received at the Federal Public Defender's Office. DFPD Gomez was advised that her presence was needed in Judge Whelan's court in order to represent Dr. THOMASSEN.

Notwithstanding Dr. THOMASSEN's objections, DFPD Gomez was appointed to represent Dr. THOMASSEN. Dr. THOMASSEN objected to the appointment of the Federal Public Defender's Office on several grounds, primarily that Deputy Federal Public Defender Gomez was not an experienced tax attorney. Even after the Public Defender was appointed to represent Dr. THOMASSEN, Dr. THOMASSEN continued to act as his own attorney by filing motions and notice of appeal on the denials of the motions.

Since the court appearance on May 9, 1983, Dr. THOMASSEN has made it very clear that he does not wish to be represented by

the Public Defender's Office and further, that he will continue to represent himself if another attorney is not appointed to represent him.

II

DEFENDANT IS BEING DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL

The Sixth Amendment provides that "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." A series of Supreme Court decisions over the last 50 years have established that under the Sixth and Fourteenth Amendments a defendant in a state or federal court must be afforded the right to the assistance of counsel, either retained or appointed, before he can be validly convicted and imprisoned. Power v. Alabama, 287 U.S. 45 (1932); Johnson v. Zerbst, 304 U.S. 458 (1938); Gideon v. Wainwright, 372

U.S. 335 (1963); Argersinger v. Hamlin, 407 U.S. 25 (1972).

Case law has also made clear that a court is not required to provide an indigent accused with any particular attorney whom he may desire. Brown v. Craven, 424 F.2d 1166, 1170 (9th Cir. 1970). However, to compel one "to undergo a trial with the assistance of an attorney with whom he has become embroiled in irreconcilable conflict is to deprive him of the effective assistance of any counsel whatsoever." Brown, Id. at 1170, see also Entsminger v. Iowa, 386 U.S. 748 (1967). In Brown, Id., the state court appointed defendant a public defender. Almost immediately a dispute arose between Brown and the attorney that had been appointed to represent him. Brown made four motions to have some other attorney appointed to represent him. The state court summarily

denied the motions without making an adequate inquiry into the cause of the defendant's dissatisfaction with his counsel or taking any other steps which might possibly lead to the appointment of substitute counsel and whom Brown could repose his confidence. Consequently, the defendant was forced to proceed with the trial. Brown continued to be dissatisfied with his attorney; refused to cooperate with his atttorney. Thus, the attorney was deprived of the power to present any adequqte defense in Brown's behalf. Id at 1169.

In United States v. Williams, 594 F.2d 1258 (9th Cir. 1979), the Ninth Circuit had an opportunity to decide a similar case. Approximately a month before trial, Williams, with his appointed attorney, appeared in open court and moved the court for the appointment of a different attorney, stating as the grounds that he and

his attorney were totally incompatible as far as preparation for trial was concerned. Although Williams made a prima facie showing of an irreconcilable conflict between himself and his appointed attorney, the court denied the motion. A week before trial, Williams and his counsel again appeared in court. He again requested a substitution of attorney. Williams stated that the disagreement consisted of a bad relationship, lack of communication and threats. Defendant then advised the court that he chose to represent himself at trial. On appeal, the Ninth Circuit found that it was error for the court not to grant the motion for appointment of new counsel.

In the case before this court, if Dr. THOMASSEN is forced to proceed to trial with the appointed counsel he now has, he will be denied effective assistance of counsel. The factors that were present in

both Brown and Williams are present in this case. Dr. THOMASSEN has advised counsel that he does not wish to be represented by her; he has advised counsel that he is dissatisfied with her services; he has shown by his actions that he will continue to represent himself; he has shown by his actions that he will ignore counsel's instructions and that he will fail to communicate with counsel. Thus, Dr. THOMASSEN's counsel will be deprived of an opportunity to present any adequate defense on Dr. THOMASSEN's behalf.

An alternative is present in this case. Dr. THOMASSEN's objections to Deputy Federal Defender Gomez representing him appear to be primarily that Ms. Gomez is not familiar with tax law. There are attorneys on the indigent panel who are familiar with tax law and have a background in it. Since Dr. THOMASSEN has made his

motions to have Ms. Gomez relieved very early in this case, this court does have an opportunity to act quickly in appointing another attorney and relieving Ms. Gomez. Thus, defendant's rights can be protected and the Speedy Trial objectives can be met.

III.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the public defender be relieved as counsel of record and that an attorney from the indigent panel be appointed to represent Dr. THOMASSEN in this action.

DATED: May 13, 1983

Respectfully submitted,

JAMES R. DUNN
Federal Public Defender

By /s/ Yolanda Barrera Gomez
YOLANDA BARRERA GOMEZ
Deputy Federal Public Defender

DECLARATION OF YOLANDA BARRERA GOMEZ

I, Yolanda Barrera Gomez, declare and state as follows:

1. On April 25, 1983, I made a courtesy appearance with Dr. THOMASSEN before Magistrate McMahon. Dr. THOMASSEN refused to be arraigned before Magistrate McMahon. He refused to sign the statement of Rights form and he refused to sign a financial affidavit that would entitle him to receive an appointed attorney. Dr. THOMASSEN continually objected to the appointment of the public defender. He specifically objected to my appointment since I had not tried any tax cases. The case was assigned to the calendar of Judge Whelan and Dr. THOMASSEN and I were ordered to report there on April 26, 1983, at 1:45 p.m.

2. On April 26, 1983, at 1:45 p.m., Dr. THOMASSEN and I appeared before Judge

Whelan. Judge Whelan, after noting that the defendant had refused to sign the financial affidavit, indicated that I was relieved from any further responsibility in this case.

3. On May 9, 1983, I was advised by the clerk of this court that my presence was necessary in order to represent Dr. THOMASSEN. I immediately went down to speak to Dr. THOMASSEN. Dr. THOMASSEN informed me that under no circumstances was he willing to accept my representation. Dr. THOMASSEN informed me that he felt that my representation of him would constitute ineffective assistance of counsel. A few minutes after our conversation, we appeared before this court. Over Dr. THOMASSEN's objections, I was appointed to represent him.

4. At this court appearance, Dr. THOMASSEN continually objected to my

appointment. Dr. THOMASSEN made it clear to this court that he did not wish me to represent him since I was not experienced in tax matters. He has filed a motion requesting that this court appoint an experienced criminal tax attorney to represent him in this matter.

5. After this court appearance, I spoke to Dr. THOMASSEN. Dr. THOMASSEN continued to advise me that he did not wish me to represent him. Dr. THOMASSEN inquired whether I had malpractice insurance. When I advised him that I did not, he suggested that I obtain such insurance.

6. Given Dr. THOMASSEN's previous statements about his opinion of me and his comments regarding malpractice insurance, I believe that he is indirectly threatening me. I do not feel that I can adequately represent someone that is seeking to intimidate me.

7. Additionally, Dr. THOMASSEN has made it very clear that he will not communicate with me regarding the defense of this case nor will he cooperate. He refuses to listen when I explain legal matters to him. Further he misrepresents to the court what we discuss. Although he claims that he is cooperative he has demonstrated by his actions that he is not prepared to cooperate with me. He has chosen not to follow my instructions and continues to file his own motions. Dr. THOMASSEN continues to request that I be relieved. In a letter received by me on May 12, 1983, (dated May 9, 1983), Dr. THOMASSEN states that I should notify the court of my own accord that I am not competent to handle a case of this nature and that it would constitute legal malpractice for me to continue to attempt to handle this case. (Please see Exhibit A.)

8. Although I have advised Dr. THOMASSEN that I do not intend to pursue any motions that he may have filed unless I believe that they are meritorious, he has instructed me in the letter mentioned above, to familiarize myself with the motions that he filed so that I may argue them on the dates that he has set them.

9. On May 16, 1983, I met with Dr. THOMASSEN. I requested and obtained his permission to attach the letter he sent me as an exhibit. This short meeting was as unproductive as the others have been. Dr. THOMASSEN again asked me to "get out of the case." By the end of the meeting, our conversation and tone had again become disagreeable.

10. We have already met several times and it is clear that I cannot adequately represent him.

11. I have advised Dr. THOMASSEN that

if I am relieved, he has three alternatives: retained counsel, a panel attorney, or to proceed in pro per.

12. I am aware of at least one attorney on the panel who has an excellent background in tax matters who might be able to represent Dr. THOMASSEN.

13. For the court's information, I would like to advise that I will be gone from the office from May 20, 1983, to June 13, 1983. Two weeks of that time will be spent at a conference and one week will be vacation.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: May 16, 1983

/s/ Yolanda Barrera Gomez

YOLANDA BARRERA GOMEZ
Deputy Federal Public
Defender

1918 Dover Drive
Newport Beach, CA 92663
May 9, 1983

Yolanda Gomez, Esq.
Public Defender Office
U.S. Courthouse
312 North Spring Street
Los Angeles, California

Dear Mrs. Gomez: CR 83-271

As you know, I have a motion before the court to be heard on Tuesday, May 31, 1983, at 1:30 P.M., for the government to pay for experienced criminal tax trial counsel of my choice or, in the alternative, for an order to release property held under lien, so that such property could be pledged as collateral to raise funds to pay for experienced criminal tax trial counsel of my choice.

You failed to ask the court for the basis of any of its rulings this date. It was obvious that you do not have the necessary qualifications to handle a

EXHIBIT A

case of this magnitude and with the possible serious consequences attendant thereto.

Until I prevail on the motions that are before the court, I am asking that you notify the court of your own accord that you are not competent to handle a case of this nature and that it would constitute legal malpractice for you to continue to attempt to handle this case under these circumstances.

In the meantime, this is to remind you that my motion for defendant to be furnished with certified copy of minutes of Grand Jury proceedings is scheduled to be heard May 23, 1983, at 1:30 P.M.

You refused to read my various motions today. I am asking that you familiarize yourself with the above-stated motions so that you can do your research for additional points and authorities to use in

order to argue properly these motions on May 23, 1983, and May 31, 1983.

Please send me a copy of your research and acknowledge receipt of this letter.

Sincerely yours,

/s/ E. H. THOMASSEN
E. H. Thomassen, M.D.

CERTIFICATE OF SERVICE

I, the undersigned, declare: that I am a citizen of the United States of America and a resident and employed in Los Angeles County, California; that my business address is the Federal Public Defender's Office, United States Courthouse, 312 North Spring Street, Room 1503, Los Angeles, California; that I am over the age of eighteen years; that I am not a party to the above-entitled action; that I am employed by the Federal Public Defender for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California at whose direction the service was hand-delivered to:

UNITED STATES ATTORNEY
1200 United States Courthouse
312 N. Spring Street
Los Angeles, California 90012

a copy of Motion for Relief of Counsel

This certificate is executed on the

date shown below, at Los Angeles, California.

/s/ Teresa Lopez

Dated of Execution: May 16, 1983

STEPHEN S. TROTT
United States Attorney
ROBERT L. BROSIO
Assistant United States Attorney
Chief, Criminal Division
JEFFREY S. NIESEN
Assistant United States Attorney
1300 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 688-3172

Attorneys for Plaintiff
United States of America

FILED
MAY 27, 1983
CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ELMER H. THOMASSEN, Defendant.	No. 83-271-FW RESPONSE OF THE UNITED STATES TO DEFENDANT'S MOTION (1) FOR A FAIR TRIAL; (2) FOR COPY OF MINUTES OF GRAND JURY PROCEEDINGS; (3) TO DISMISS THE INDICTMENT FOR LACK OF JURISDICTION; (4) TO PAY FOR COUNSEL OR DISMISS TAX LIENS.

INTRODUCTION

Defendant, acting pro se, filed a number of motions requesting various actions. Although excused from filing a reply, the United States responds to defendant's motions and requests that they be denied.

1. MOTION FOR A FAIR TRIAL

Defendant moves for a fair trial and alleges that currently, he cannot receive one. The basis for his motion is (1) Judge Whelan, being an employee of the United States is not a fair or impartial judge; (2) the jury selection is infair and does not represent a fair cross-section of the community; and (3) the United States Attorney should not prosecute the case because United States Attorneys all violate the law. He requests (1) a lottery to choose a State court trial judge; (2) a fair jury; and (3) a State government

attorney be made prosecutor.

In support of the motion, defendant has not cited one applicable case. Rather than facts, he bases the motion on his conclusions and beliefs. In short, the motion is frivolous on its face if not contemptuous. It should be denied.

2. MOTION FOR COPY OF GRAND JURY PROCEEDINGS

Defendant requests a copy of the Grand Jury proceedings so he might determine (1) if a quorum of grand jurors was present; and (2) whether there was prosecutorial misconduct.

The general rule is, of course, that the proceedings before the Grand Jury are secret. Rule 6(e)(2), Federal Rules of Criminal Procedure. An exception is made, however, permitting disclosure when ordered by the court on a defendant's request:

". . . upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the Grand Jury." Rule 6(e)(3)(C)(ii), Fed. R. Crim. P.

The showing must demonstrate a particularized need which outweighs the policy of Grand Jury secrecy. Pittsburgh Plate Glass v. United States, 360; U.S. 395, 400 (1959). Unsubstantiated, speculative assertions of improprieties in the proceedings do not supply the "particular need" required to outweight the policy of secrecy. United States v. Ferreboeuf, 632 F.2d 832 (9th Cir. 1980), cert. denied, 450 U.S. 934 (1980).

Defendant has offered nothing but unsubstantiated, speculative assertions to justify his request for disclosure. His request should be denied. United States v. Ferreboeuf, supra.

3. MOTION TO DISMISS INDICTMENT

Defendant's motion is based on a claim that the court has no jurisdiction over a criminal action arising under Title 26 U.S.C. § 7201. Defendant is wrong. The court has subject matter jurisdiction based on 18 U.S.C. § 3231. See: United States v. Spurgeon, 671 F.2d 1198 (8th Cir. 1982).

4. PAYMENT OF TAX COUNSEL

Defendant's final motion is for an order compelling the government for the appointment and payment of experienced tax counsel to defend him. Alternatively, he requests that government liens impressed against his property be ordered released so he can use it to raise money for counsel.[1]

[1] These liens, sustained by the District Court, are based on the failure to pay taxes due for years not involved in this prosecution. See: (CV78-1731R)

As the court is aware, all that the Sixth Amendment requires is that adequate counsel be appointed to an indigent defendant at his request. The court has appointed, at defendant's request, Mr. Brian Robbins of the United States Federal Public Defenders Office. Mr. Robbins is a thoroughly experienced and competent counsel who if given the chance will adequately represent defendant.

The appointment of Mr. Robbins constitutes compliance with the constitutional mandate regarding representation by counsel. There is no authority for the claim that the counsel appointed must be experienced in a particular field. All that is required is that effective counsel be appointed to represent a criminal defendant. See: Johnson v. Zerbst, 304 U.S. 458, 426 (1937); Morris v. Slappy, 103 U.S. 1610 (1983)

Respectfully submitted,

STEPHEN S. TROTT
United States Attorney

ROBERT L. BROSIO
Assistant United States
Attorney
Chief, Criminal Division

/s/ Jeffrey S. Niesen
JEFFREY S. NIESEN
Assistant United States
Attorney

Attorneys for Plaintiff
United States of America

CERTIFICATE OF SERVICE

I, MARIE MASTRIANNA, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is Office of the United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction the service by hand described in this Certificate was made; that on May 27, 1983, I hand delivered, in the above-entitled action, a copy of RESPONSE OF THE UNITED STATES TO

DEFENDANT'S MOTION (1) FOR A FAIR TRIAL; (2) FOR COPY OF MINUTES OF GRAND JURY PROCEEDINGS; (3) TO DISMISS THE INDICTMENT; (4) TO PAY FOR COUNSEL OR DISMISS TAX LIENS.

addressed to: Brian Q. Robbins, DFPD

Office of the Federal Public Defender

1503 United States Courthouse

312 North Spring Street

Los Angeles, CA 90012

This Certificate is executed on May 27, 1983 at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.

/s/ Marie Mastrianna

1918 Dover Drive
Newport Beach, CA 92663
May 9, 1983

Yolanda Gomez, Esq.
Public Defender Office
U.S. Courthouse
312 North Spring Street
Los Angeles, California

Dear Mrs. Gomez: CR 83-271

As you know, I have a motion before the court to be heard on Tuesday, May 31, 1983, at 1:30 P.M., for the government to pay for experienced criminal tax trial counsel of my choice or, in the alternative, for an order to release property held under lien, so that such property could be pledged as collateral to raise funds to pay for experienced criminal tax trial counsel of my choice.

You failed to ask the court for the basis of any of its rulings this date. It was obvious that you do not have the necessary qualifications to handle a

case of this magnitude and with the possible serious consequences attendant thereto.

Until I prevail on the motions that are before the court, I am asking that you notify the court of your own accord, that you are not competent to handle a case of this nature and that it would constitute legal malpractice for you to continue to attempt to handle this case under these circumstances.

In the meantime, this is to remind you that my motion for defendant to be furnished with certified copy of minutes of Grand Jury proceedings is scheduled to be heard May 23, 1983, at 1:30 P.M.

You refused to read my various motions today. I am asking that you familiarize yourself with the above-stated motions so that you can do your research for additional points and authorities to use in

order to argue properly these motions on May 23, 1983, and May 31, 1983.

Please send me a copy of your research and acknowledge receipt of this letter.

Sincerely yours,

/s/ E. H. THOMASSEN
E. H. Thomassen, M.D.

1918 Dover Drive
Newport Beach, CA
92663
May 26, 1983

Brian Q. Robbins, Esquire
Deputy Public Defender, Federal
1503 U.S. Court House
Los Angeles, California 90012

Dear Mr. Robbins:

Re: MOTION TO WITHDRAW PLEA, CR 83-271 FW

Your associate, Mrs. Yoland Gomez, was present in the courtroom on May 9, 1983 during the so-called "arraignment" in this case.

As is known to the court, I did not refuse to make a plea. I simply stated to the Court that I did not understand Count One of the indictment as read by the clerk; whereupon, the Court pleaded me "guilty."

Mrs. Gomez failed to ask the Court for the basis of the court's proceeding.

I am asking, therefore, that you file a motion to withdraw the Court's plea in order to protect my rights to procedural due process.

Enclosed herewith is a copy of such a motion which I have prepared for your convenience.

I am hand-delivering this letter with attached proposed motion to you this date for your expeditious handling.

Thank-you for your cooperation!

Sincerely yours.

/s/E. H. THOMASSEN
E. H. THOMASSEN
Defendant without effective assistance of counsel.

1918 Dover Drive
Newport Beach, CA 92663
May 26, 1983

Brian Q. Robbins, Esquire
Federal Deputy Public Defender

Dear Mr. Robbins:

RE: MOTION FOR AN ORDER FROM THE COURT TO CORRECT THE RECORD

Just yesterday I was able to obtain a copy of the docket material from the computer clerk.

I bring to your attention that the docket sheet, under date of May 9, 1983, items 14, states: "Crt enters plea for deft of not guilty as to all three cnts. of the indictment." Then, on the fourth line below this appears this entry: "Defendant enters plea of not guilty (Counts 1-3)."

Also, I bring to your attention item No. 9, which states:

"Dft in propria persona fld request for crt order correcting the record (Minute order of 4/26/83) Rule 136. (Judicial notice)."

As you know or should know, I did not enter a plea. The court entered a plea for me, and the record must reflect the truth.

Will you please take what action is necessary so that the above two important errors are corrected in the record by court order, preferably so that the court can act on these two items and issue such an order when other motions are heard on May 31, 1983.

Sincerely yours,

/s/ E. H. THOMASSEN

E. H. THOMASSEN
Defendant without efective assistance of counsel

1918 Dover Drive
Newport Beach, CA
92663
May 31, 1983

Brian Q. Robbins, Esquire
Deputy Federal Public Defender
1503 U.S. Court House
312 North Spring Street
Los Angeles, California 90012

Dear Mr. Robbins:

RE: NOTICE OF MOTION AND MOTION BY DEFENDANT FOR AN ORDER TO THE GOVERNMENT TO DISCLOSE INDUCEMENT, PROMISES AND PAYMENTS TO PROSPECTIVE GOVERNMENT WITNESSES

Attached hereto is an important motion which I have prepared for your convenience and use in filing or obtaining permission of the court for me to lodge or file.

I welcome your assistance in supplementing the motion in any way you see fit to protect my procedural rights to due process.

Sincerely yours,
E.H. THOMASSEN, without effective assistance of counsel

1918 Dover Drive
Newport Beach,
California 92663
May 31, 1983

Brian Q. Robbins, Esquire
Deputy Federal Public Defender
1503 U.S. Courthouse
312 North Spring Street
Los Angeles, California 90012

Dear Mr. Robbins:

RE: MOTION AND JUDICIAL NOTICE TO CORRECT THE RECORD IN ACCORDANCE WITH JUDGE WHELAN'S ORDER OF MAY 18, 1983 (Court reporter's transcript attached hereto)

The computer docket sheet shows under date of May 18, 1983, that the court ordered the clerk "not to accept any documents submitted by Dr. Thomassen in pro per, for lodging for filing." (emphasis added)

Please see page 5 of the official reporter's transcript, lines 1 through 3: "THE COURT: Well, quit filing papers. I am going to instruct the clerk if you are not going to represent yourself to quit

accepting motions from you." (emphasis added.)

As explained to you on May 18, 1983, immediately after you were appointed to give me adequate and effective assistance of counsel, the court did not order me not to lodge papers.

Under the same date (May 18, 1983, docketed May 20, 1983) item No. 18, the computer docket sheet shows that I lodged supplemental defendant's counsel relief... "(PLACED IN FILE NOT USED.)" As a matter of fact, the court accepted this lodged supplement and referred to it and considered it during the hearing on 5/18/83.

Please obtain a court order to correct the above errors.

E. H. THOMASSEN, without effective assistance of counsel.

1918 Dover Drive
Newport Beach, CA
May 31, 1983

Brian Q. Robbins, Esquire
Deputy Federal Public Defender
1503 U.S. Court House
312 North Spring Street
Los Angeles, California 90012

Dear Mr. Robbins:

RE: Proposed second supplement to defendant's motion to be furnished with certified copy of minutes of Grand Jury proceedings and for examination and inspection pursuant to Brady v. Maryland, 373 U.S. 83 (1963)

As shown on the docket sheet, the original motion which I filed when I was in propria persona was largely and essentially denied summarily by Judge Whelan, the only part being granted was for me to see the final tally of the Grand Jury indictment on April 6, 1983.

This original motion, as you known, has been recalendered for full hearing

this afternoon. You have refused to research this motion and, consequently, are in a compromised position when you indicate to me that you cannot argue the motion or at least give me effective assistance of counsel so that I can competently argue the motion this afternoon.

Will you please make necessary arrangements with the court so that I can lodge or file the above supplement before the original motion filed on April 25, 1983, is fully argued in the appropriate court.

Sincerely yours,

/s/E. H. THOMASSEN

E. H. THOMASSEN,
defendant without effective assistance of counsel

1918 Dover Drive
Newport Beach, CA
92663
May 31, 1983

Brian Q. Robbins, Esquire
Deputy Federal Public Defender
1503 U.S. Courth House
312 North Srping Street
LosAngeles, California 90021

Dear Mr. Robbins:

RE: NOTICE MOTION TO PROSECUTING ATTORNEYS

I have good reason to believe that the Grand Jury met on one or more days in the previous month before I was indicted on April 6, 1983. Therefore, it is essential for my adequate defense to be able to subpoena Attorney William Landers and perhaps others for testimony and discovery.

Will you please file or obtain permission from the court for me to file a proper and adequate notice motion similar to the one already before the

court for the purpose of obtaining the testimony of Judge Whelan.

Sincerely yours,

/s/ E. H. THOMASSEN

E. H. THOMASSEN, without effective assistance of counsel

1918 Dover Drive
Newport Beach, CA
92663
May 31, 1983

Brian Q. Robbins, Esquire
Deputy Federal Public Defender
1503 U.S. Courth House
312 North Spring Street
Los Angeles, California 90012

Dear Mr. Robbins:

RE: NOTICE MOTION FILED BY DEFENDANT BY PROPRIA PERSONA ON MAY 9, 1983 (Motion No. 5)

Since this motin was originally set for hearing on May 31, 1983, and the judge's clerk does not show it to be before the court today, I assume you will take whatever action is necessary for proper handling to protect my procedural rights to due process.

I am hand-delivering this letter to you this morning so that you have adequate notice of this important matter.

Sincerely yours,
E. H. THOMASSEN, defendant
without effective assistance of counsel.

1918 Dover Drive
Newport Beach, CA 92633
May 31, 1983

Brian Q. Robbins, Esquire
Deputy Federal Public Defender
1503 U.S. Court House
312 North Spring Street
Los Angeles, California 90012

Dear Mr. Robbins:

RE: WRIT OF PROHIBITION

The motions that were denied by Judge Franics Whelan were made in good faith and not for the purpose of delay, but to protect me procedural rights to due process.

Therefore, I make this formal demand that you file whatever writ is necessary to prevent this case from going forward until the issues clearly stated in the motions have been heard in a higher court and my procedural rights to due process have been protected.

Sincerely,
E.H. THOMASSEN, Defendant without assistance of counsel

1918 Dover Drive

Newport Beach, Ca.
92663

June 29, 1983

Mr. Brian Q. Robbins

Deputy Federal Public Defender

Suite 1503, United States Courthouse

312 North Spring Street

Los Angeles, California 90012

Dear Mr. Robbins:

Re: Your request that I submit to a psychiatric examination this morning.

When I arrived home at 2:00 am today. my wife informed me that you had called yesterday requesting that I appear at a Dr. Stalberg's office for a psychiatric examination today.

You have not informed me whether this has been ordered by the court or not.

You have not told me who ordered this examination or furnished a copy of any order requiring me to appear.

You have not asked me whether or not I oppose this examination without at least first being informed of the ramifications of such a voluntary or forced submission to such an examination. For example, what happens to the report from the psychiatrist? Will the information that I had the examination or even had it requested to be done be available to the California Board of Medical Quality Assurance for them to summarily suspend my California medical license?

What does an examination today have to do with my state of mind or mental capacities eight or so years ago when the alleged offenses are claimed to have occurred?

I was not present at any hearing or even notified of any hearing regarding

such an examination being ordered by the court if and when such was held or is to be held.

What evidence has there been furnished to the court that this examination is "appropriate" in this case as required in Rule 12.2, Rules of Criminal Procedure?

You have stated definitely on two occasions recently that you are making a motion to be relieved as my counsel. Have you done this? Please make such a motion promptly.

In your letter of June 24, 1983, you inferred that you could not see me at your office without a prearranged appointment. Also the rules of the California Bar and American Bar Association require that you remove yourself from this case when you have repeatedly shown that you are not competent to handle the pre-trial and trial proceedings.

Sincerely yours,

/s/ E. H. Thomassen

COPIES TO:

Judge Francis Whelan

Criminal Prosecutor J. Niesen

1918 Dover Drive
Newport Beach,Ca.
92663
July 1, 1983

Brian Q. Robbins, Esq.
Deputy Federal Public Defenders
1503 U.S. Courthouse
312 North Spring Street
Los Angeles, California 90012

Dear Mr. Robbins:

Re: Court-ordered psychiatric examinations

I object to the psychiatrict examination requested by the criminal prosecutor Niesen, as well as the additional one requested by you, both of which were subsequently ordered by the court to be done on July 12, 1983, and July 11, 1983, respectively.

There is no rational basis for an examination of this nature at this time; and it would not be of any help to the court as to determining my mental state at the time the alleged offenses are claimed to have occurred. Furthermore,

as you indicated in our conversation recently concerning a possible psychiatric examination being requested by you, you admitted you did not know anything about pyschology or psychiatry; and, consequently this is merely a reflection of your insecurity and incompetence in attempting to handle a case of this magnitude and with such severe consequences.

Judge Whelan indicated in his order for the examination, that the order could be changed by the court; therefore, will you please promptly make a motion which is appropriate and which will demonstrate that there is no need for this examination and request that the order be cancelled.

Sincerely yours,

E.H. THOMASSEN, M.D.
defendant without
effective assistance
of counsel

COPY TO: Judge
Francis Whalen,
Criminal prosecutor Jeffrey
Niesen.

1918 Dover Drive
Newport Beach, Ca.
92663
July 1, 1983

Brian Q. Robbins, Esq.
Deputy Federal Public Defender
1503 U.S. Courthouse
312 North Spring Street
Los Angeles, California 90012

Dear Mr. Robbins:

Re: Your notice that the mental state of defendant Elmer H. Thomassen at the time of the alleged offenses may be used in trial as a defense, Case No. CR83-271 FW

The notice that you gave to the criminal prosecutor and the court order may have been necessary because of the timely requirements of Sections 12.2 of the Rules of Criminal Procedure; however, as stated in the rules, you did not give written notice that you may wish to provide expert testimony during the trial as to the mental status of the defendant at the

time of the alleged offenses.

Please correct this oversight on your part promptly so that the court will not be able to use the issue of timeliness for such notice in case this issue become important during trial.

Please send me a copy of the written notice at the time it is filed.

Sincerely yours,

/s/E. H. Thomassen

E. H. THOMASSEN
defendant without
effective assistance
of counsel

COPY TO: Judge Francis Whelan
Criminal prosecutor
Jeffrey Niesen

LAW OFFICES
FEDERAL PUBLIC DEFENDER
CENTRAL DISTRICT OF CALIFORNIA
Suite 1503, United States
Courthouse, 312 North Spring
Street, Los Angeles, California
90012

JAMES R. DUNN (FTS)798-2854
FEDERAL PUBLIC DEFENDER (213)688-4791

PETER M. HORSTMAN
CHIEF DEPUTY

June 24, 1983

Dr. Elmer H. Thomassen, M.D.
408 Westminster Avenue
Newport Beach, California 92660

Dear Dr. Thomassen:

I have been notified by Ms. Christine Aijala, court clerk to U.S. District Judge Francis Whelan that the judge wishes to have your present in his court room at 1:30 p.m., on June 29, 1983. I believe it is based on your inability to appear for appointments with John Stalhberg, M.D.

The court has continued trial in your case until Wednesday, July 27, 1983, at 10:30 a.m.

I have requested the court to order

a competency examination to determine if you are mentally competent to stand trial pursuant to 18 U.S.C.§4244. The court has appointed to examine you for competency Dr. Saul Faerstein, M.D., (213)550-0565. I believe Dr. Faerstein to be one of the most able and accomplished forensic psychiatrists available in the state of California. It is critical that you contact Dr. Faerstein and set up a mutually convenient appointment and that he be able to examine you. Any records of psychological or psychiatric counseling or treatment that you have had should be brought with you at the time of your interview.

As of this date, you have not yet filled out a financial affidavit (Form CJA23) which is a requirement for our continued representation of you. You must certify your current financial situation in order to qualify for representation as an indigent.

I cannot impress upon you the importance of not conceling further meetings with any of the doctors appointed to interview you. Noncooperation in any of these matters could result in difficulties with the court including loss of ability to put on certain defenses and also problems with bond.

If it has been your intention to seek retained counsel in this matter, the continuance granted by Judge Whelan should give you adequate time to do so. The basis for this continuance was so that an adequate competency examination could be done in this case.

I hope that you understand that when you come into the office without an appointment, it is sometimes extremely difficult to meet with you because of other work that is in progress or court appearances. As I stated to you earlier,

the Federal Public Defenders Office must make the final determination as to legal strategy and tactics in any case which we are attorney of record. We cannot simply act as a conduit for another individual's legal work.

Very truly yours,

/s/ Brian Q. Robbins

BRIAN Q. ROBBINS
Deputy Federal Public Defender

BQR:tl

(4-008861S128 1251 DUPLICATE OF TELEGRAM TELEPHONED, RELAYED FOR WILLCALL)

I EXPECT TO COMPLETE NEGOTIATIONS ON LOAN AS SOON AS LIEN ON THE PROPERTY IS RELEASED BY THE GOVERNMENT.

GEORGE THOMASSEN

1322 EST

1329 EST

NNNN

GEORGE W. THOMASSEN

11507 Allview Drive

Beltsville, MD 20705

May 26, 1983

E. H. Thomassen, M.D.
1918 Dover Drive
Newport Beach, California 92660

Dear Elmer:

I expect to have the proceeds from a loan for you to pay for your attorney's fees as soon as the Government release the lien from my California property.

Sincerely yours,

/s/ George W. Thomassen

George W. Thomassen

State of Maryland
County of Montgomery,

In witness whereof, George W. Thomassen personally appeared before me, a Notary

Public in the state of Maryland in the county of Montgomery, on the 26th day of May, 1983, and signed the above letter in my presence, and attested to the fact that it was his free act and deed.

Signed this 26th day of May, 1983,

/s/Nona C. McDonald
Notary Public

My Commission Expires My Commission expires July 1,1986

LOS ANGELES POLICE DEPARTMENT

VICTIM'S REPORT MEMO

Victim's Name (Firm Name if Business)

THOMASSEN, INC.

Type of Report

GTA

DR (If Available) 83-047 921

POLICE STATION (AREA) CENTRAL

RD 114

DETECTIVE CENTRAL

DATE OF REPORT 6-2-83

(printed content of form omitted)

LOBBY REGISTRATION LOG
(PLEASE SIGN-IN)

FTS
633-6051

NAME(Print)	DATE	TIME	ATTORNEY
George R. Costety	5-13-83	1:45	
George Ujihorn	5-16-83	12:55	Pollock
Sam Gillgen	5-18-83	2:15	"
W. Hamilton			
Michael Kenney	5-23	3:10	RSP
Elizabeth Taylor	5-25	9:30	BGR
THOMASSEN, E.H. M.D.	5-26-83	12:20	Robbins
THOMASSEN, E.H. M.D.	5-31-83	11:07	Robbins
THOMASSEN, E.H. M.D.	6-1-83	3:00	Robbins
THOMASSEN, E.H. M.D.	6-2-83	3:15	Robbins
		+ 4:00	
THOMASSEN, E.H. M.D.	6-2-83	5:45	Robbins

DECLARATION OF ELMER H. THOMASSEN IN SUPPORT OF APPLICATION FOR STAY PENDING DISPOSITION OF PETITION FOR WRIT OF MANDUMUS:

I, ELMER H. THOMASSEN, declare:

1. I am the defendant in the case below in U.S. District Court for the Central District of California in Los Angeles, U.S. v. Elmer H. Thomassen, CR 83-271, Francis C. Whelan presiding.

2. The purpose of this declaratirn is to support my application for a stay pending disposition of my Petition for Writ of Mandamus.

3. I have filed this motion for a stay and the corresponding Petition for Writ of Mandamus as quickly as possible, however, the following factors have prevented me from applying for this earlier

and have prevented me from requesting a stay in the court below:

a. On June 2, 1983 while visiting Deputy Federal Public Defender Brian Q. Robbins at his office at 312 N. Spring Street, Los Angeles, Calif. 90012 the car which I was driving was stolen from where it was parked near the I.R.S. headquarters. All of my documents related to this case were stolen and needed to replaced before I could prepare and file this Motion and the Petition for Writ of Mandamus. (Please see Victim's Report, Appendix to Petition for Writ of Mandamus, hereafter designated "App.," App. at A-132)

b. The transcript for the hearing on May 31, 1983 was not ready until just recently. The transcript was necessary for this Court to understand my case.

c. I first waited for me Deputy

Federal Public Defender to file the Motion for a Stay in District Court below and/or in the Ninth Circuit and for him to file a Petition for Writ of Mandamus; however, my Deputy Federal Public Defender, Brian Q. Robbins refused to file for either a stay or for a Writ of Mandamus. Mr. James Dunn, supervisor of Federal Public Defenders in Los Angeles also refused to file the above mentioned papers for me in either the court below or in this Court. (See Letter to Brian Q. Robbins, App. at A-129)

d. The master-file in the clerk's office below was weeks behind, so I had to wait until the master file was available to prepare this motion and Petition for Writ of Mandamus.

4. It is urgent that this Court expedite my motion for a stay because my trial is scheduled for June 28, 1983 and

the Honorable Francis C. Whelan has ordered that there will be no excludable time for motions. (See Docket entry No. 20 for 5/18/83, App. at A-4 and Docket entry for 5/31/83, App. at A-7). The Judge has stated in open court on more than one occasion that he would grant no excludable time for motions and would insist on the June 28, 1983 trial date, even if it was necessary to interrupt another trial to impanel the jury.

Judge Whelan refuses to permit the trial to be set for a date later than June 28, 1983 because of a reported conflict with a seminar and/or vacation time.

5. I have made the following attempts to obtain competent counsel to represent me at my trial:

a. On April 25, 1983, I requested that the court grant me a continuance to

enable me to retain an attorney of my choice because I had no confidence in the Federal Public Defender's Office because of their lack of knowledge and experience in tax law and criminal tax trials. (See Docket entries for April 25, 1983 and May 9, 1983 at A-1, A-2 and Criminal Minutes for April 25, 1983 and May 9, 1983, App. at A-9 and A-10).

b. On May 9, 1983 I filed a "Motion for an Order to Pay for an Experienced Criminal Tax Attorney of Defendant's Choice or, in the alternative, Order the Government to Release Property held under lien, Points & Authorities and Declaration." (App. at A-37). On May 9, 1983 the Court denied the motion and on May 31, 1983 the Court again denied the motion on reconsideration. (See Docket entries for May 9, 1983, App. at A-6 & A-7, and Criminal Minutes for May

9, 1983, App. at A-10, and Transcript of May 31, 1983, App. at 28).

c. The facts stated in my declaration attached to my "Motion for an Order to Pay for an Experienced Criminal Tax Attorney...." filed below on May 9, 1983 are incorporated herein by reference, and are true and correct. (See Declaration attached to Motion, App. at A-40).

d. I have contacted the following attorneys to represent me in my trial; however, I was unable to retain my attorney of choice because the attorneys requested between $15,000.00 and $20,000.00 retainers in advance:

Robert Chatterton, Orange County
Arthur Tranakos, Atlanta, Georgia
Donald Macpherson, Phoenix, Arizona
M. D'Amico, San Diego, California
Earl Durham, San Diego, California

(Please see Declaration, App. at A-40 and Declaration attached to Motion for Continuance, filed May 9, 1983, App. at A-90).

e. I am unable to obtain loans for attorneys' fees because all of my property has I.R.S. liens against it, from judgment before the U.S. District Court below (CV 78-173 1MR).

f. I have attempted to obtain loans from the following people and others but have been unsuccessful in obtaining a loan:

George W. Thomassen (See App. at A-130, A-131)

James Saline (See App. at A-42)

Robert G. Costantinou (See App. at A-43)

George W. Thomassen has specifically refused a loan to me because liens for my assessed taxes have been attached to

his real property in California. (See Letter, App. at 131 and Telegram, App. at A-130).

g. Deputy Federal Public Defender Yolanda Gomez suggested to the Court in her motion filed May 18, 1983 (App. A-95) and argued on May 18, 1983 (Transcript of 5-18-83, App. at A-20) that the Court appoint someone from the indigent panel since "There are attorneys on the indigent panel who are familiar with tax law and have a background in it." (See Motion at p. 6, App. at A-100).

h. On May 9, 1983 I filed a Motion for a Continuance in Order to Obtain [competent] Assistance of Counsel. (See Motion, App. at A-88); however, my motion was denied on the same date. (Docket entry No. 14 on May 9, 1983, App. at A-3 and Criminal Minutes for May 9, 1983, App. at A-10). The Court further indi-

cated on May 18, 1983 that "speedy trial excludable time finding would not be made by court based on motions filed." (See Docket entries for 5/18/83, docketed 5/20/83, App. at A-4).

i. I have asked Brian Q. Robbins, my Deputy Federal Public Defender, in person and in writing to file a writ and/or other papers in the Ninth Circuit to protect my rights to due process regarding the denial of my motions for competent assistance of counsel (Lee Letter to Mr. Robbins, App. at A-129); however, Mr. Robbins has refused to file for any writ or for a stay in conjunction with the writ.

6. The following facts support my position that I have been furnished with inadequate and incompetent counsel, and denied effective assistance of counsel for my criminal tax trial:

a. Deputy Public Defender Yolanda B. Gomez appeared specially as a courtesy to the court on April 25, 1983; but she had refused to file any pre-trial motions or assist me with the motions that I filed while I was without counsel due to no fault of my own. Ms. Gomez also was ordered to appear at my so-called arraignment on May 9, 1983, and again refused to assist me with my pretrial motions or even read them. (See Docket entries for 5/25/83 and 5/9/83 at A-1 to A-3; and Letter to Ms. Gomez, App. at A-107).

b. Ms. Gomez requested that she be relieved from handling my case because she was not competent to handle a case of this magnitude. (See Transcript of 5-18-83, App. at A-22 to A-24, and Motion to Ms. Gomez, App. at A-95).

c. Ms. Gomez' Motion for Relief

was first denied by the Court on May 18, 1983; however, because Ms. Gomez had a calendar conflict, Deputy Federal Public Defender Brian Q. Robbins was substituted for Ms. Gomez on May 19, 1983 (Docket Entry No. 19, App. at A-4; Transcript of 5-18-83, App. at A-20 to A-24; Criminal Minutes 5-19-83, App. at A-11).

d. Mr. Robbins informed me immediately after his appointment that he has had only one other criminal tax case, but has not completely tried any and has not won any in trial.

e. Since being appointed my counsel on May 19, 1983, Mr. Robbins has adamently refused to file, research, or argue any of my pretrial motions which I filed when I was in propria persona; likewise, he has refused to file any of the trial motions I have prepared for him to file since his appointment.

(See letters to Mr. Robbins, App. at A-107 to A-129).

f. At the proceeding in Court on May 18, 1983, when Mr. Robbins was appointed to represent me, the Court ordered that I would not be allowed to speak in court again, and if I attempted to do so, that my bond would be withdrawn and I would be placed in immediate custody. (Referred to in Transcript of 5-31-83, App. at A-28, lines 1-3; but not included in partial Transcript of 5-18-83, App. at A-20).

g. At the proceeding in Court on May 18, 1983, the Court ordered me to "Quit filing papers. I am going to instruct the clerk if you are not going to represent yourself to quit accepting motions from you." (Transcript of 5-18-83 at p. 5, App. A-24).

h. At the proceeding in Court on

May 31, 1983, Mr. Robbins refused to argue my motions which had been filed prior to appointment my court appointed counsel. He stated it was the policy of the Federal Public Defender's Office not to permit the Deputy Federal Public Defender to argue defendant's pro se motions. (See Transcript of 5-31-83, App. at A-27).

i. Mr. Robbins did ask the Court if I could speak to my motions on May 31, 1983, but the court refused to allow me to speak. (Transcript of May 31, 1983, App. at A-27).

j. At the hearing on May 31, 1983, Mr. Robbins failed to ask for the grounds used by the Court for the denial of pre-trial motions when they were before the Court for the denial of reconsideration. Therefore, my pre-trial motions have gone unargued so far at the

time they were before the Court. (Transcript of 5-31-83, App. at A-27 to A-31).

k. Mr. Robbins did not advise me that the U.S. Attorney had filed a response to my motions, in spite of the fact that he expected me to argue the motions myself (Transcript of 5-31-83, App. at A-27), and in spite of the fact that the responses had been hand delivered to him on May 27, 1983, and filed on May 27, 1983. (See Docket entry on May 27, 1983, App. at A-6). The docket entry on May 27, 1983, is in error in stating that a "reply to answer to motion to dismiss" was filed. Mr. Robbins made no reply to the U.S. Attorney's responses to my motions.

l. I did not find out until June 2, 1983, that the U.S. Attorney had filed responses to my motions scheduled to be heard on May 31, 1983, because the com-

puter print-out of the current docket entries was not up-dated on May 31, 1983. When I checked with the docket clerk and had her run a print-out of the current docket entries on May 31, 1983, there was no entry after May 19, 1983; thus, there was no way that I could have known that the U.S. Attorney had filed responses to my pre-trial motions on May 27, 1983, since Mr. Robbins chose not to advise me of the U.S. Attorney's responses, even though he had been personally handed them on May 27, 1983 by the U.S. Attorney.

m. I did not receive the up-to-date computer print-out of the docket until June 2, 1983; and I was shocked to see that the U.S. Attorney had apparently responded to my four motions scheduled for hearing or rehearing on May 31, 1983, and had filed responses on May 27, 1983.

I immediately contacted Mr. Robbins on June 2, 1983, at about 5:00 P.M., and confronted him with the docket sheet entry of May 27, 1983. (See docket entry App. at A-6). Mr. Robbins advised me to wait and he would get a copy of the U.S. Attorney's responses to my motions. I waited for Mr. Robbins to return with the responses until nearly 6:00 P.M. At that time, I was dumbfounded when finally Mr. Dunn, the Federal Public Defender, who is Mr. Robbins, supervisor, told me that Mr. Robbins had certainly gone home and that it would be useless for me to wait any longer. (See Lobby Registration Log, App. at A-133). Mr. Robbins not only did not return with the U.S. Attorney responses, but contemptuously left me waiting in pain on crutches while he went home. It was evidently during this

time that car which I had been driving was stolen where it was parked with my handicap emblem on it near the I.R.S. headquarters; the car contained my papers concerning this case and two typewriters. (See Victim's Report, App. at A-132; and see Docket entries for 5-27-83 at A-6 which were not on the computer on May 31, 1983).

n. I have attempted to protect my rights by filing and/or lodging my own motions when Mr. Robbins refused to file motions for me; however, because of Judge Whelans's order to the Clerk not to accept my motions, I have no means of protecting my rights in the court below. The foregoing statement is supported by the following facts:

For example, immediately after the Court hearing on May 19, 1983, which was exactly ten days following my so-called

arraignment, I asked Mr. Robbins if he would file a motion that I had prepared for a Bill of Particulars. He stated that he would not file it for me. Since I could not file the motion myself due to Judge Whelan's order silencing me and preventing me from filing any papers, (See Transcript of 5-18-83, App. at A-24) I asked Mr. Robbins if I could lodge the motion for a Bill of Particulars, as the Court had not ordered me not to lodge any papers. Though Mr. Robbins refused to do so, he suggested that I could lodge the motion for a Bill of Particulars myself. This I proceeded to do by first serving Assistant U.S. Attorney Jeffrey Niesen, who was the assistant U.S. Attorney assigned to my case. Then I tried to lodge the motion, but the regular court clerk refused to allow me to lodge the motion, stating that the

Court had ordered me not to lodge or file any papers. I explained to her that even the Court had not ordered me to stop loding any documents for the record. (See Transcript of 5-18-83, App. at A-24)

o. I have both orally and in writing requested Mr. Robbins to correct the record and docket entries which have numerous errors which are prejudicial to me, but he has refused to do so. (See letter to Mr. Robbins, App. at A-112) The record and entries have errors as follows: (not complete)

1. Item No. 2 under date of April 18, 1983 on the docket (Docket entry, App. at A-1) is in error in that no arraignment was actually held on that date and it is further in error in that Public Service Officer D. Elias misled the Court when he said I had been contacted,

because he had never spoken to me, nor was I aware of the indictment until my wife called me out of the state where I was attending a continuing medical education meeting, on or about April 22, 1983. (See Docket entry No. 2 on 4-18-83, App. A-1). I first saw the indictment (See Indictment, App. A-13) on Friday April 22, 1983, after I signed for certified mail at the post office.

2. Docket entry, item No. 4, (App. at A-1) and the Minute Order for April 25, 1983, (App. at A-9) show errors, as follows:

a. I did not inform the Court that I could not hire private counsel. I stated that I would attempt to hire private counsel. (See lines 5 and 6 of the minute

order, App. at A-9). (See also Motion, App. A-44).

b. Line 6 of the minute order of April 25, 1983, states that I refused to complete CJA 23, Financial Affidavit. I did not refuse to complete the Financial Affidavit; I stated I could not fill it out without the assistance of counsel, which the court refused to grant me for this purpose. (App. at A-9).

c. Likewise, I did not refuse to sign the P/R Bond. I merely requested assistance of counsel for this step of the proceeding, which was not granted by the Court.

d. Finally, I was assigned to Judge Kenyon on the 25th of April, 1983, but was subsequently assigned to Judge Francis C. Whelan.

3. Item No. 6 on the docket (App.

at A-2) under date of April 26, 1983, shows Motion No. 1 was filed on April 26, 1983, when it was actually filed and so stamped as filed on April 25, 1983 (App. at A-33), when I was in propria persona. The document which was filed on April 26, 1983 was a Supplement and Memorandum of Points and Authorities and Declaration which was not the original motion. (App. at A-2)

4. On May 9, 1983, a so-called arraignment was held and the court first plead me "guilty" in open court and subsequently changed the plea to "not guilty." Contrary to the docket entry for May 9, 1983 (App. at A-3) and Criminal Minutes for May 9, 1983 (App. at A-10), only the first count of the indictment was read to me and that count I did not understand.

5. On line 18 of Item 14 on the

docket for May 9, 1983, the docket shows that I entered a plea of "not guilty." This entry is in error, as I made no such plea. (Docket, App. A-3) The Court entered a plea for me.

6. On May 18, 1983, the docket print-out shows that I lodged supplemental defendant's counsel (relief motion), in propria persona. Then the statement is made: (Placed in file not used.) This is in error. The motion was used by the Court. As a matter of fact, the Court received a copy of this motion supplement and referred to it in the hearing on May 18, 1983. (See Docket, Item, No. 18, lines 1 and 2, App. at A-4; and Transcript of 5-18-83, App. at A-22).

7. Also, on May 18, 1983, Docket Item No. 19, lines 4 and 5 (App. at A-4), states: "Crt ords clerk of crt not to accept of any documents submitted by Dr.

Thomassen in pro per, for lodging for filing." (emphasis added) The Court did not order me not to lodge any papers, but the court clerk added the word "lodging." (See Docket Entry No. 19, App. at A-4 and Transcript of 5-18-83, page 5, line 1, App. at A-24).

8. Docket Entry for May 27, 1983 (App. at A-6) is in error. It states: "Reply to answer to motion to dismiss" (Motion #3). No answer was filed and no reply was filed. Only a response was filed by the United States.

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

I, Elmer H. Thomassen, declare under penalty of perjury that the foregoing statements of fact in the Declaration of ELMER H. THOMASSEN in Support of Application for Stay Pending Disposition of Petition for Writ of Mandamus are true and correct. Executed on June 17, 1983 in Newport Beach, Calif.

/s/Elmer H. Thomassen
Elmer H. Thomassen